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ABSTRACT

This report examines academic tenure in American higher education and reviews arguments associated with its particular aspects. It describes the extent of tenure in Washington institutions, public and private, 2-year and 4-year, and it summarizes and discusses the tenure policies and procedures in these institutions. In the final section, a series of conclusions and recommendations is presented. A content summary is presented under separate cover. (Author/MJM)

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ACADEMIC TENURE IN WASHINGTON HIGHER EDUCATION

June, 1972

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IN

WASHINGTON HIGHER EDUCATION

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I. INTRODUCTION

Academic tenure is under concerted attack from several quarters, academic and nonacademic. Within the educational establishment recommendations for tenure's reexamination are part of virtually every major report. For example, the American Council on Education's Special Committee on Campus Tensions (the Linowitz Committee) contends:

> Tenure policies, concerning a faculty member's right to hold his academic appointment until retirement once competence has been demonstrated (except when extreme malfeasance has been established by due process), need to be reappraised. The justification for tenure is the crucial protection it gives to academic freedom. Professors who espouse unpopular views must be free from reprisal. Tenure was not devised in the spirit of trade union systems to guarantee job security. But it has come to serve this function too, at a cost. It sometimes has been a shield for indifference and neglect of scholarly duties. At a time when an increasing number of teachers, especially in the community colleges and the state colleges, are organizing for effective bargaining, the Committee recognizes that a challenge to the present concept of tenure is no small matter, that the issues involved are complex and difficult to resolve, and that a satisfactory solution must maintain effective safeguards for academic freedom. . . . Standards for awarding tenure--a matter of institutional autonomy--need broadening to allow greater consideration of teaching ability. Scholarly communities must be protected as effectively as tenure now protects individual scholars.[1]

The President's Commission on Campus Unrest (the Scranton Commission) makes a similar recommendation:

> As one means of improving the quality of teaching in higher education, we urge reconsideration of the practice of tenure. Tenure has strong justifications because of its role in protecting the academic freedom of senior faculty members. But it can also protect practices that detract from the institution's primary functions, that are unjust to students, and that grant faculty members a freedom from accountability that would be unacceptable for any other profession.[2]

A more recent report, that of the Newman Committee, calls for changes in recruitment to allow universities to "leaven their faculties with practitioners who are outstanding in their jobs and eager to bring ingenuity to bear on transmitting their own competence and confidence" and, thereby recommends, "a revision of standard tenure policies--leading to short-term contracts for at least some categories of faculty positions."[3]

From the nonacademic sector, particularly the mass media, comes such statements as, "almost every campus has them: incompetent professors who cannot be fired, much less shamed into quitting. Losers by almost any academic standard, they are actually winners of academe's choicest prize: 'tenure' (from the Latin tenere, meaning to hold or keep)."[4] The Wall Street Journal, pointing to the inability of academic departments to rid themselves of extraneous faculty (those without assignments due to the conversion of required courses into electives) because of their tenured status, states, "for these and other reasons, tenure, long one of academia's most cherished traditions, is suddenly under attack. . . . And, while nobody expects the onslaught to dislodge overnight the cornerstone of academic freedom, it is increasingly doubtful that tenure can survive much longer in its present form."[5]

Sharing the concerns of the educational establishment and the media, several state legislatures have called for studies of tenure. During the 1971 legislative session, the Washington House of Representatives adopted a resolution requesting the Council on Higher Education to undertake an examination of academic tenure in Washington higher education. This resolution, House Floor Resolution 1971-110,

restates some of the views of the Linowitz and Scranton Committees:

> WHEREAS, Academic tenure--the right granted a faculty member, upon demonstration of his competence, to retain his appointment until resignation or retirement--is a subject of growing concern to persons both within and without the campus environment; and
>
> WHEREAS, The primary justification of tenure lies in the protection it affords a faculty member in the exercise of his academic freedom; and
>
> WHEREAS, Although tenure was not initially conceived as a guarantee of job security, some may feel it has come to serve this function, and as such, it may have become a shield to protect the incompetent or indifferent scholar; and
>
> WHEREAS, The public may rightfully expect that it is supporting faculty members who have professional competence and deep dedication to their students; and
>
> WHEREAS, An increasing number of national authorities and associations are calling for study of the problems associated with tenure, and for a redefinition and broadening of the standards for granting tenure;
>
> NOW, THEREFORE, BE IT RESOLVED, By the House of Representatives, that the Council on Higher Education is requested to undertake a study of the problems and issues involved in the subject of academic tenure in Washington State institutions of higher learning.
>
> BE IT FURTHER RESOLVED, That the results of the Council's study and its recommendations be presented to the legislature for its consideration in January, 1972.

This report is in response to HR 1971-110; it examines academic tenure in American higher education and reviews arguments associated with its particular aspects. It describes the extent of tenure in Washington institutions, public and private, two-year and four-year, and it summarizes and discusses the tenure policies and procedures of these institutions. In the final section, a series of conclusions and recommendations is presented.

That there is controversy over academic tenure is clear; understanding of its complexity is less in evidence. For at least the past half century, academic tenure has been presented as the cornerstone of academic freedom in America. The importance of academic freedom to the unfettered operation of institutions of higher learning is generally accepted. The importance of tenure to academic freedom is less settled. The major objectives of this report are the examination of these relationships and, through such examination, enhancement of understanding of this complex perquisite of higher education's professionals.

II. ACADEMIC TENURE IN HIGHER EDUCATION

"Tenure is a means to certain ends: specifically, (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the (teaching) profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensible to the success of an institution in fulfilling its obligation to its students and to society."[6] This statement, the view of the American Association of University Professors, is the most generally recognized and utilized conceptual guideline for academic tenure in American higher education. With these words, the AAUP (jointly with the American Association of Colleges) links tenure and academic freedom, rendering the former essential to the latter.

As suggested earlier, academic tenure conduces to polarization. It is attacked as "a unique system of employment security (conferring) significant benefits (e.g. assured lifelong employment) upon faculty members, while requiring few, if any, reciprocal obligations." Defenders insist that academic freedom cannot be realized without tenure; therefore, attacks on tenure are attacks on academic freedom and, hence, potentially irresponsible.[7]

The presumption of this report is that academic tenure is more than a "unique system of employment security": it is a phenomenon with an obvious and important relationship to academic freedom. At the same time, it is believed that alternatives with potential efficacy can be contemplated, and these need not be demonstrated "manifestly more effective" safeguards to academic freedom than tenure to be considered "responsible."[8]

A. Academic Tenure: Definitions and Practices

Academic tenure in America is comparatively new; the first carefully articulated statement was presented in 1915 by the then fledgling AAUP. At that time the AAUP was less representative of the total academic community than is the case today. College and university presidents and deans were not eligible for membership, and, the initial statement on tenure was "the result of university professorial thinking."[9] The AAUP's concept of tenure was introduced in the following form:

> In every institution there should be an unequivocal understanding as to the term of each appointment; and the tenure of professorships and associate professorships, and all positions above the rank of instructor after ten years of service should be permanent.[9a]

While there are individual variations on the central theme, the essential characteristic of academic tenure is "continuity of service, in that the institution in which the teacher serves has, in some manner--either as a legal obligation or as a moral commitment, relinquished the freedom or power it otherwise would possess to terminate the teacher's services."[10]

The currently operating version of the AAUP Statement on tenure carries with it the notion of continuity of service following a probationary period, or permanent employment after a specified term of service or attainment of a specified rank. Since this statement is the source of language of many institutional tenure policies, it is quoted herein:

(A) After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

In the interpretation of this principle, it is understood that the following represents acceptable academic practice:

(1) The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consumated.

(2) Beginning with appointment to the rank of full-time instructor or a higher rank, the probationary periods should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution it may be agreed in writing that his new appointment is for a probationary period of not more than four years, even though the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years. Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period.

(3) During the probationary period a teacher should have the academic freedom that all other members of the faculty have.[11]

All of Washington's institutions of higher education employ definitions of academic tenure in their policy statements, and these generally accord with the essence of the 1940 AAUP Statement, specifying the conditions, purposes, and goals of tenure. The three major criteria employed by the AAUP, length of service, academic rank, and demonstrated competence as a teacher and scholar, also are reflected in these policy statements. In the community colleges the Tenure Act of 1969 governs: since academic rank is not an important aspect of

community college teaching, the emphasis is on fulfillment of a specified term of service; specifically, tenure must be awarded after three consecutive years of full-time faculty service.

Although the three criteria, service, rank and competence, are interrelated, the weight given each varies among institutions. With regard to the probationary period, no Washington university or college exceeds the seven-year maximum probationary period specified by the AAUP, and provision is made for credit for full-time service in other institutions of higher learning. Also in accord with AAUP guidelines, probationary faculty members are evaluated annually and informed of the results.[12] Should it be determined that termination is in order, the probationary faculty member is informed by a given date, usually in the spring, that his contract will close with the end of the next academic year. Most institutional tenure policies also contain reference to academic rank--usually, any rank below associate professor will be considered a pretenure rank.

Tenure is usually applicable only to members of the teaching faculty, although on some campuses it is offered to librarians and counselors. Temporary, visiting and clerical appointments do not entail tenure. There are references to tenure for administrators in most policy statements. For the most part, administrators may not acquire tenure while serving in administrative capacities except under extraordinary circumstances. At the same time, tenured faculty members who accept administrative appointments may retain their tenured faculty status. They may not, however, have tenure as administrators.

Award of tenure entails a multi-staged procedure and a number of participants. Recommendations for award or denial of tenure are the product of departmental processes, usually derived by majority vote of the tenured departmental faculty.[13] The recommendation is transmitted (by the chairman) to the dean who, upon receipt, makes his recommendation to the president. The president makes the final decision in the name of the governing board, or he makes his recommendation to the board which then makes the final decision. The major deviation from this model occurs where provision is made for faculty/administrator tenure committee involvement, particularly at some of the smaller four-year institutions.

Once awarded, tenure may be terminated for "cause" in accordance with stated procedures. The causes for termination may be specified, but usually they are left for interpretive development on a case-by-case basis. The two most easily-agreed justifications for termination are retirement and voluntary resignation. The two remaining categories, reorganization (including financial exigency) and adequate cause, are more controversial. Most of the four-year institutions, and all of those in the public grouping, specifically include financial exigency in their tenure termination provisions. There is no consensus on what should be included in the "cause" category.

Procedures governing the tenure termination process, providing for initiation of proceedings, conduct of hearing, decision and appeal, are common.

The involvement of a faculty review committee is a usual requirement. Arrangements for informal conciliation are stressed, but they reflect some variance from institution to institution.

The tenure policies of Washington institutions are considered in greater detail later in this report. For the moment it is sufficient to note that academic tenure is a recognized concept in Washington institutions of higher education, and it has received some legislative endorsement, at least in the case of the community colleges. The policies of Washington institutions do not deviate significantly from those of institutions in other states, and for the most part the comments and concerns in the literature on tenure are relevant to these policies.[14]

B. Academic Tenure, Academic Freedom, and Academic Responsibility

Arguments in support of academic tenure often emphasize many of the following points. By freeing a faculty member from a series of constraints and pressures that might otherwise inhibit his quest for knowledge and understanding, academic tenure contributes to academic freedom. Academic freedom, in turn, facilitates the free exchange of ideas, "the indispensable condition to enlightened community decision and action."[15] According to this view:

> Academic freedom and tenure do not exist because of a peculiar solitude for the human beings who staff our academic institutions. They exist instead in order that society may have the benefit of honest judgment and independent criticism which otherwise might be withheld because of fear of offending the dominant social group.[16]

The encouragement of men in some professions to speak their minds free of fears of retribution is in the common interest. College and university teaching, the judiciary, journalism, research, the clergy, are examples of professions in which free expression is vital. In the case of the college professor, his work consists of his thought and speech. If he loses his position because of what he writes or states, he may be forced to leave his profession. If some are forced to leave, others may be intimidated, and their usefulness to their students and to society will be diminished.[17]

Academic freedom also accords with the moral conviction that the political state should not limit the inalienable rights of the individual. To this end exist constitutional guarantees of free speech, implying that persons uttering unpopular, possibly dangerous, statements will not be punished by the government

for their utterings and specifying that Congress will enact no laws impairing this right. In response to those who argue that such constitutional guarantees are adequate to ensure academic freedom (and tenure is not necessary, as there is adequate redress through the courts) it is stated:

> Professors need more than (the) absence of governmental sanctions, more than a guarantee they will not be jailed for the expressions of their thoughts. If they are to be encouraged to pursue the truth wherever it may lead, to 'follow out any bold, vigorous, independent train of thought,' braving the criticism, ridicule, or wrath of their colleagues, they need protection from all material sanctions, especially from dismissal. The dismissal of a professor from his post not only prevents him from performing his functions in society, but, by intimidating thousands of others and causing them to be satisfied with 'safe' subjects and 'safe' opinions, it also prevents the entire profession from effectively performing its function.[18]

Finally, it is argued that institutions of higher learning have a responsibility to society to continually examine and appraise accepted values, theories, and traditions. Such a responsibility is bound to create tensions and conflicts between members of the institutions and elements in the community. Seen this way, academic freedom becomes "a safeguard which society has devised to protect its long-range interest in free critical inquiry from the chilling effects of censorship and reprisal against unconventional thoughts and ideas."[19]

Running somewhat counter to such views, it is stated that the importance of academic tenure as one means to these goals is evident. But academic tenure is one of several conceivable safeguards of academic freedom. While an effective relationship between tenure and academic freedom is clear, it is not a necessary one--tenure is not the sine qua non of academic freedom. To argue that academic freedom cannot be had without academic tenure logically places

such freedom outside the purview of the probationary, nontenured professor and suggests that academic freedom is the privilege of a tenured aristocracy. To draw a necessary connection between tenure and academic freedom implies that before the formal introduction of tenure in this country, some fifty-five years ago, academic freedom did not exist. Finally, to so argue suggests that academic freedom cannot exist in other nations, other political cultures, where tenure is not a feature of higher education, such as Great Britain (a country with a strong history of academic freedom).[20] Because academic freedom did and does exist in the absence of academic tenure, the two are not logically inseparable.

From this emerges a corollary view that it is not tenure, the right to hold an appointment until resignation or retirement, but assurance of the application of procedures of due process in termination proceedings and the concomitant preclusion of dismissal for the exercise of constitutional rights that are essential to academic freedom. This view, that the essential quality is due process rather than tenure, recognizes that academic freedom is at least as important to the neophyte scholar as to the veteran (a view recognized by the AAUP with its admonition that "during the probationary period a teacher should have the academic freedom that all other members of the faculty have").[21]

The separation of tenure from academic freedom finds support in the recently adopted (November, 1971) "Statement on Academic Freedom and Responsibility and Academic Tenure" of the American Association of State Colleges and Universities. The AASCU Statement maintains that tenure is not a

prerequisite to academic freedom, since academic freedom is the right of all members of the academic community. Tenure is considered a provision of employment designed primarily to make the teaching profession attractive to persons of ability. It also constitutes an important protection for academic freedom and thereby contributes to the success of an institution in fulfilling its educational and societal obligations, but the inseparable relationship between tenure and academic freedom is eschewed.

The 1971 AASCU Statement makes an important distinction between "academic freedom" and "constitutional freedom." The former (academic freedom), "should be restricted to the rights of expression pertaining to teaching and research within (faculty members') areas of recognized professional competencies." The latter (constitutional freedom) is enjoyed by all citizens under law of the land. This distinction permits discussion of a concomitant to academic freedom: academic responsibility.[22]

While an educator's need for freedom to pursue knowledge is recognized and accepted, the obligations this freedom entails are less well defined. These obligations may be collectively entitled "academic responsibility." They accomodate at least two interrelated dimensions, one professional, the other societal.

At best, a scholar is competent in one or a few fields, not in all. Outside his immediate area of expertise he is usually little more qualified to speak than any member of the polity. This idea is expressed in the AAUP's 1940 Statement:

> As a man of learning and an educational officer (the college or university teacher) should remember that the public may judge his profession and his institution by his utterances. Hence, he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he is not an institutional spokesman.[23]

The implications of this statement, and the obligations stemming from it, are expanded in a 1950 statement by Professor Robert MacIver:

> (The educator) should not arrogate to himself an authority beyond the range of his competence. He should not regard the rostrum of his class as a platform from which to broadcast his opinions on issues irrelevant to the courses he is teaching. On controversial issues within his proper field he should fairly present the evidences on both sides--or on every side--and should not exercise his powers of sarcasm on those who hold opposing views. He should recognize the limitation of his knowledge and the fallibility of the knower. Particularly if his work lies in the social sciences or in other areas where human values and human interests are involved, he should be very careful that his own valuations do not color his presentation of the facts of the case. He should not hesitate to state the conclusions to which he believes the evidences point, but he should be eternally on guard against bias. Nor should he attribute baser motives to those who differ from him, for motives are always mixed, and nearly always they are precariously inferential. He cannot claim the primary right of the scholar, academic freedom, when he abandons the approach of the scholar.[24]

Elaborating on this theme, the AASCU Statement is emphatic:

> Beyond (one's professional competency), expressions by members of the academic community should carry no more weight or protection than that accorded any other citizen under the guarantee of constitutional rights: that is, outside of one's professional field, one must accept the same responsibility which all other individuals bear for their acts and utterances.[25]

These statements refer to a teacher's professional responsibilities, those relating to his duty and obligation to present facts objectively and his responsibility to temper his extramural comments with a disclaimer of institutional

endorsement. In this period of direct action, however, another dimension of academic responsibility is emerging. The AASCU relates to this dimension in the following manner in its 1971 Statement:

> The use of physical force, psychological harassment, or other disruptive acts which interfere with institutional activities, freedom of movement on the campus, or freedom of all members of the academic community to pursue their rightful goals, is the antithesis of academic freedom and responsibility. So, also, are acts which, in effect, deny freedom to speak, to be heard, to study, to teach, to administer, and to pursue research.[26]

Both facets of academic responsibility (professional and societal) are variously evident on Washington campuses. For the most part, however, institutional policy statements focus on the first: they detail professional responsibilities (fairness in teaching, etc.).[27] Because of the relative newness of the direct action phenomenon, statements applying to disruptive activities are not extensive.

Among the institutions which have developed (or are developing) statements on this subject, the University of Washington's is a good example:

> The expression of dissent and the attempt to produce change. . . may not be carried out in ways which injure individuals or damage institutional facilities or disrupt the classes of one's teachers or colleagues. Speakers on campus must not only be protected from violence, but given an opportunity to be heard. Those who seek to call attention to grievances must not do so in ways that clearly and significantly impede the functions of the University.[28]

Both the Community College Tenure Act and The Evergreen State College Social Contract (generally, a code of professional ethics) include references to this aspect of academic responsibility. The Tenure Act specifies

that unlawful acts of violence, unlawful acts resulting in the destruction of property, and unlawful interference with the orderly conduct of the educational process are sufficient causes for tenure termination.

The Evergreen Social Contract contains the following statement:

> As an institution, Evergreen has the responsibility for protecting the members of its community and visitors to it from physical harm, from personal threats, and from uncivil abuses. Similarly, it is obligated both by principle and by the general law to protect its property from damage and unauthorized use and its operating processes from interruption.

A serious violation of the Social Contract could be considered grounds for dismissal.

It is apparent that important changes in views of academic freedom and academic responsibility are occurring. The traditional stance that tenure is indispensable to academic freedom is being modified by demands for academic freedom for all faculty, tenured and nontenured, and these demands, in turn, are being accompanied by a greater emphasis on academic responsibility, the concomitant of academic freedom.

C. Academic Tenure: A Merit System For Teachers

Some view tenure as a condition of employment unique to college and university faculty. Critics frequently see it as a sinecure enjoyed by incompetent, unresponsive, and entrenched teachers. President Silber of Boston University expresses this latter view colorfully: "There is no reason to believe, if sloth has been recognized for a couple of thousand years as one of the deadly sins, that sloth is not going to be relevant in the determination of the academic character: I think the granting of a sinecure is clearly a device of the devil to let sloth into the world again. . . . We should probably do something to discourage sloth as a part of the academic character."[29]

The relationship between tenure and sloth is probed later. For now it is sufficient to note that permanent appointments are not conditions of employment unique to the teaching profession (and they are certainly not unique to the college teaching profession, since tenure is a recognized aspect of elementary and secondary teaching). In several respects academic tenure corresponds to employment relationships in the civil service, and, as is often cited, the federal judiciary. In other respects it differs.

Academic tenure emanated from two needs. The first of these, discussed above, was academic freedom. The second, less often stated, was job security, a concern separated somewhat from freedom in classroom teaching, but one nonetheless pressing.

The quest for personal security in employment corresponded with unfortunate early personnel practices. One such practice was the release or exchange of teachers after the accumulation of several years in a given educational system. The objective was to keep costs down: as a teacher gained experience, his income tended to rise. To cope with this, administrators 'kept the biddies moving.' This somewhat heartless procedure was more a feature of elementary and secondary education than college teaching, but its occurrence in the latter is noted.[30]

Demands for "contractual definition of function, for uniform procedures for dismissal, for definite standards of promotion based on seniority and service--for the definiteness, impersonality, and objectivity that are the essence of bureaucratism," and the essence of academic tenure, also grew from a quest for job security, in turn impelled by an abundance of qualified job applicants.[31] Whereas current concerns over academic tenure may be indirectly attributable to surpluses of qualified job applicants, seventy years ago a 'surplus PhD' phenomenon had another effect:

> Between 1890 and 1900, the number of college and university teachers in the United States increased by fully 90 percent. Though the academic market continually expanded, a point of saturation, at least in the more attractive university positions, was close to being reached. . . . The law of supply and demand did not spare the academic market: as the number of available teachers increased, their bargaining power diminished; as more job-hunters came on the scene, job-holders felt less secure. Under these competitive conditions, the demand for academic tenure became urgent, and those who urged it became vociferous.[32]

As suggested earlier, this vociferation was manifested in the AAUP's 1915 statement on academic tenure.

Viewed as continuous or permanent employment after fulfillment of specified probationary requirements, and involving the preclusion of dismissal except on a showing of cause, academic tenure is analogous to merit systems for public employees, and a form of tenure is an accepted aspect of employment in many nonacademic areas. Some view it as comparable to a seniority or job security plan for employees covered by collective bargaining, or to profit and stock-option plans for executives in business. Law, medicine, and religion are seen as three professional areas embracing forms of tenure. Physicians' and lawyers' professional licenses, for example, may only be suspended for good cause, and this is considered a form of tenure.[33] Institutional boards of trustees in some states or colleges enjoy tenure: "the very college and university trustees who so often rail against this system that 'freezes the professor into his job' are themselves frequently beneficiaries of a tenure system, for many an institution makes use of 'life trustees.'"[34]

Without challenging the definition of tenure employed in many of these analogies, and the aptness of the analogies themselves, one may feel generally more comfortable with the ("classified") civil service and federal judgeship comparisons than with some of the others. Perhaps the most obvious analogy is the federal judge who, once appointed, holds office for life during good behavior. This profession also provides a particularly appropriate comparison

because the purpose of judicial tenure is to remove magistrates from the political and social pressures attending many of the controversial decisions they must make.

The point is that as a device to assure continued employment for faculty members, academic tenure has counterparts in occupations in other social and economic sectors. At the same time, there are important differences. Most of these lie in the appointment and removal processes, particularly the necessary involvement of peers in decision-making capacities. Procedures for dismissal in the state civil service, federal judgeships, and college teaching may be compared to illustrate this point.

In Washington, as in other civil service systems, public employees may be demoted, suspended, or dismissed for neglect, inefficiency, incompetence, insubordination, indolence, conviction of crimes involving moral turpitude, malfeasance, gross misconduct, or willful violation of published rules or regulations.[35] Employees may be dismissed by appointing authorities but must be furnished with written statements of charges 15 days prior to the action (dismissal may be immediate when the good of the service is involved). Employees may appeal to the State Personnel Board, which consists of three persons appointed by the Governor to six-year terms with the confirmation of the Senate; board members may not be state employees. The Board's decision is final. Appeal must be through the courts. Unlike academia tenure systems, other public employees, peers, do not perform evaluative roles in dismissal procedures.

In the case of the federal judiciary, judges of the district courts, courts of appeals, and Supreme Court have life tenure. There is (unlike academia) no compulsory retirement age. Removal is solely by impeachment for "high crimes and misdemeanors," initiated by majority vote of the House of Representatives and requiring a two-thirds vote of the Senate (after full trial) to convict. Other magistrates do not perform evaluative roles, and, again, the removal process is outside the purview of the judge's peers.

Procedures governing removal of tenured professors differ from institution to institution, but the prevailing pattern, particularly in the public four-year institutions, involves a faculty committee on tenure.[36] After hearing the case, the faculty hearing committee makes its recommendations to the chief administrative officer of the institution, and after review he forwards them with his own to the governing board for final decision. In these procedures, unlike those governing the two most frequently-cited analogous tenured endeavors (federal judiciary and the classified civil service) faculty peer involvement is present and crucial.

The importance of faculty involvement is paramount. According to the AAUP's statement on academic due process:

> Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues: in such competence it is implicit that responsibility exists for both adverse and

> favorable judgments. Likewise there is the more general competencies of experienced faculty personnel committees having a broader charge. Determinations in these matters should first be by the chief academic officers with the concurrence of the board. The governing board and president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.[37]
>
> (emphasis added)

Thus, with academic tenure, decisions on termination are internally derived: peer evaluation is prominent, and accountability is essentially a fraternal matter. Noninstitutional participants play no direct part in the process (unless the terminated individual elects to appeal through the courts). This fact, more than any other, distinguishes academic tenure from other merit and tenure systems.

Hence, while the concept of continuous or permanent employment is not limited to the teaching profession, because of faculty hegemony in award and termination decisions, academic tenure is a distinctive form of permanent employment unique to that profession.

D. Academic Tenure: A Few Myths and A Few Realities

Whatever its strengths or weaknesses, academic tenure evokes varied and conflicting attitudes. Considerable misunderstanding on and off the campus surrounds it, and misconceptions frequently underlie its defenses and criticisms. Accordingly, examination of some of the more prevalent conceptions and misconceptions of tenure seems in order. Two of the more prominent beliefs, that tenure is essential to academic freedom and that it is unique to college teaching, were treated in preceding sections. A third matter, tenure's legal status, is treated separately in a subsequent section. At this point, the emphasis is on institutional tenure procedures and practices, the extent and prevalence of tenure, and the presence or lack of accountability.

1. Probationary Service Requirements

Academic tenure is commonly seen as a status college professors acquire somewhat automatically after passage of a specified time period, regardless of professional competence. Such a conception contains elements of myth and reality. A professor may attain tenure after the passage of a specified time period or achievement of a particular rank, but this is not necessarily "automatic," and not all professors achieve tenure. While common criteria guiding determination of tenure eligibility are lacking, tenure in Washington institutions is usually awarded on the basis of (1) length of service at the institution, (2) academic rank, and (3) demonstrated competence as a teacher and scholar. In

the State's community colleges, where tenure is governed by statute, the emphasis is on length of service--three consecutive years of employment "automatically" qualify one for academic tenure.[38]

Virtually all of the institutions of higher education impose probationary service requirements on teaching personnel. Again, in the community colleges three consecutive years of service are usually required. In the four-year institutions probationary periods range from five to seven years (see Table I). Such probationary periods provide opportunities to develop, demonstrate, and observe competence. In most departments evaluation is performed annually, and to achieve tenure teachers must survive annual retention reviews.

TABLE I

FACULTY PROBATIONARY REQUIREMENTS: WASHINGTON FOUR-YEAR INSTITUTIONS

Institution	Maximum Probationary Period	Eligible Academic Rank	Comments
University of Washington	7 Years	Assoc. Prof.	Assistant professors with 7 consecutive years of service and 3 consecutive years as assistant professor may be given tenure.
Washington State University	5 Years	Assistant	Eligible after 4 years.
Central Washington State College	5 Years	Assistant	4 years for persons above Instructor.
Eastern Washington State College	6 Years		Faculty member eligible for tenure consideration when appointed for fifth consecutive year.
Western Washington State College	7 Years	Associate	1 to 3 years of service for associate professor. 1 year service for full professor. Tenure awarded to assistant professors in exceptional cases.
Gonzaga University	7 Years	Associate	4 year minimum service requirement for all faculty members.
Pacific Lutheran University	7 Years	Assistant	
Seattle University	No Information		
University of Puget Sound	No Information		
Fort Wright College		Associate	
Northwest College	3 Years	Instructor	Tenure, when granted, commences after the fifth year.
St. Martin's College	7 Years	Associate	
Seattle Pacific College	6 Years	Assistant	5 years for associate professor. 4 years for full professor. Instructors may be continued indefinitely without tenure.
Walla Walla College	(Presently revising rules; not yet adopted)		
Whitman College	6 Years	Professor	Instructors, assistant and associate professors can be granted tenure by special vote of the Board of Trustees.
Whitworth College	7 Years		

A faculty member may advance to a tenured rank and acquire tenure before the end of the specified probationary period. Probationary periods are aimed at new and nonexperienced faculty, but experienced persons hired from other institutions are also frequently required to serve at least short periods before gaining tenure.

Washington institutions' probationary period procedures accord generally with AAUP standards:

> Beginning with appointment to the rank of full-time instructor or a higher rank, the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution it may be agreed in writing that his new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years. Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period.[39]

Patterns governing probationary periods for teachers in Washington institutions are also similar to those prevailing across the nation, as indicated on the following table:

TABLE II

State Universities and Land-grant Colleges Offering Tenure After a Particular Probationary Period And at a Particular Rank[40]

Probationary Period (yrs.)	Professor	Associate Professor	Assistant Professor	Instructor
0	11	3	—	—
1	2	1	—	—
2	8	5	—	—
3	17	18	—	—
4	6	11	4	2
5	—	4	15	—
6	—	—	9	3
7	—	1	9	11
Not specific	2	3	—	—
Total number of Institutions	46	46	37	16

Minimal periods of service and tenure rank are only two of the (inter-related) factors governing apprenticeship: a third is continuous evaluation.

The statute governing award of tenure in the community colleges refers to such evaluation: "The probationary faculty appointment period shall be one of continuing evaluation of a probationer by a review committee. The evaluation process shall place primary importance upon the probationer's effectiveness in his appointment."[41]

According to the State Board for Community College Education, the criterion underlying such evaluation is the probationer's performance in the light of his job description.

Most four-year college and university tenure policies contain references to evaluative criteria, although these are often indirect. There are frequent references to ability as a teacher, scholar, and (or) researcher. Beyond this,

criteria may include "excellence in teaching," "ability to teach effectively," "proven excellence in teaching," "satisfactory performance," "professional competence," and "successful teaching experience." Still others are, "talent as a scholar," "productivity in research," "distinct potential for scholarship," "demonstrated superior scholarship," and "effectiveness in professional activities."

A few institutions list factors not relating directly to professional competence: Northwest College refers to "moral integrity," Fort Wright requires "satisfactory conduct," Pacific Lutheran seeks "personal traits and qualities of mind suited to scholarship," Gonzaga requires "a spirit of generosity in contributing to the general well-being of the University," and Whitman calls for a "contribution to the extra-curricular life of the college."

The AAUP does not specify evaluative criteria, since its emphasis seems to be on safeguards against dismissal, but references found in a recent examination of tenure policies in 80 state universities and land-grant colleges indicate that Washington institutions are generally in accord with the rest of the country.

TABLE III

Criteria for Acquisition of Tenure in State Universities and Land-grant Colleges Specifying Evaluative Requirements.[42]

Evaluative criteria for acquisition of tenure	Number of institutions specifying N = 80
Teaching ability	34
Research ability	33
Professional degrees and achievement	25
Scholarly publications	17
Cooperation and general service	17
Character and personality	9
Advising service to students	4
Public and community service	2
U.S. citizenship or permanent residentship	2
Personal relation as a faculty	1
Creative ability	1
Participation in professional societies	1
International program assignment	1
Leadership in educational movements	1
Other professional contributions	1
Not specific about criteria	46

As probationary period requirements, annual retention reviews, evaluative criteria, and promotional stipulations are applied, it should not be surprising that some faculty are denied award of tenure. It is stated that greater numbers leave before the matter is formally decided in their disfavor. The number of such resigning faculty cannot be accurately determined for obvious reasons. Thus, reported figures are only partially indicative, although they run counter to the view that tenure is awarded automatically. For Washington, the estimates are the following:

Teaching Personnel Dismissed Rather
Than Awarded Academic Tenure
1966-1971

Washington State Universities	27
Washington State Colleges*	94
Washington Private Colleges	35
Total	156

*Excludes The Evergreen State College

For the community colleges, which must be treated separately because of the effects of the Community College Tenure Act, the following summary applies:

New Faculty Employed in Potentially Tenurable
Positions Since August, 1969 Not Reemployed:

Services unsatisfactory--dismissed	1
Services unsatisfactory--resigned voluntarily	5
Services terminated because of financial exigency	2
Services satisfactory--resigned voluntarily	19
Total	27

(NOTE: Faculty members in tenurable positions employed on the effective date of the Community College Tenure Act, August 9, 1969, received tenure.)

Probationary requirements offer opportunities to evaluate new faculty members, and time for faculty members to develop teaching skills, but they have related effects with important implications: these are manifested in "up or out" requirements.

2. "Up or Out" Requirements

"Up or out" policies involve two separate but related issues, one centering on probationary service requirements, the other on promotional requirements. In the former instance, college teachers must attain tenured status at the end of the specified probationary period or their service must be terminated. As a rule, they are ineligible for continued service on a nontenured basis after fulfillment of their probationary period requirements (some institutions provide limited opportunities to continue service for short periods beyond the probationary period, but these provisions apply to exceptional cases). Under its second meaning, "up or out" refers to stipulations that faculty members be promoted within specified periods or resign. Thus, a new instructor might receive an initial appointment for a period of two years with the understanding that he achieve promotion to assistant professor at the end of that period or resign (regardless of the probationary period). Once promoted, he would serve his remaining probationary years as assistant professor with the understanding that his appointment would terminate if he failed to achieve promotion to tenured rank (associate or full professor) at the end. Such promotional requirements are often developed on an individual basis and not expressed in general institutional tenure policy.

The concept of "up or out" can relate to either; here it refers to the first, prohibitions against retaining nontenured faculty beyond the end of their probationary periods. Faculty must achieve tenure or be dismissed; in the final

analysis, a candidate for tenure must get it or get out. This accords with the AAUP view that probationary periods should be discrete, and upon completion faculty members should be given assurance of continuous appointment through award of tenure or they should be dismissed.

"Up or out" requirements have some advantages for the institution. By forcing judicious recruiting programs and demanding the forthright dismissal of faculty failing to meet minimal standards, they tend to prevent accumulation of substandard teachers on the permanent faculty. Without strict tenure requirements and practices (strict "up or out" policies), department chairmen might become careless and faculty selection efforts might prove less than satisfactory.[43] As "up or out" policies are diligently applied, the possibility of 'deadwood' accumulation on the permanent faculty is minimimized.

At the same time, there are disadvantages to both the institution and to the faculty. One relates to adequacy of the probationary period. It has been argued that probationary periods are too short for adequate evaluation, primarily at the universities, with their emphasis on research and publication. The following example (now mitigated by surpluses of PhD qualified applicants and more faculty tending to complete their dissertations before embarking on teaching careers) illustrates this concern:

> . . . six years may not be enough to judge the capabilities of a scholar in most of the humanities and in some of the social sciences. He may have started full-time teaching two or three years before he completed his doctoral work; by the time he has recovered from his dissertation, selected a new project, and embarked on new research, another three or four years may have passed and he still has published nothing to prove his scholarly productivity. Under strict

> tenure rules his university must make the decision--to let him go or to give permanent tenure--before his eligibility for a tenure position can be appraised. If he is sent away and later develops into an outstanding scholar, the university will have lost a valuable asset. If he is kept and turns out to be a dud the university will be saddled with an embarrassing liability.[44]

While an institution can invite the teacher back after he has proved himself elsewhere (though it may cost considerably more in the long run), it is equally apparent that institutions may be forced to make lifetime decisions before new teachers have a fair chance to demonstrate their abilities or reveal their incompetencies.

"Up or out" requirements are also being increasingly subjected to criticism for reasons associated with the financial stringencies confronting many institutions and the presence of large segments of relatively young tenured faculty on their campuses. Specifically, schools facing severe financial limitations may be forced to dismiss competent young professors rather than award them tenure. This condition contributes to situations with bizarre overtones:

> 'A friend of mine, a department head at a big midwestern school, just had to let three of his best young teachers go and keep some very mediocre ones that he wanted to get rid of simply because the good ones were due for tenure and the others weren't,' (says Charles A. Barker, Vice President of J. C. Wendell Associates, an educational consulting firm in New Jersey), 'He was livid when he told me about it.'
>
> Columbia University, facing a 1970-71 budget deficit of an estimated $15.3 million, is one of the many schools sharply curtailing tenure appointments. Student protests recently spotlighted the plight of seven young assistant professors of music at Columbia, one of whom won a Pulitzer prize last year for music composition. All are fast approaching their up-or-out dates, and all could end up looking for new jobs.

> 'The only thing that makes this situation the least bit different from that facing most assistant professors in 2,000 other universities is that one of these guys got the Pulitzer,' says Jack Beeson, Chairman of Columbia's music department.[45]

Situations such as these are stimulating searches for alternatives. Cornell University's is an example. Doctor Robert A. Plane, Provost, noting that the situation is not yet at the crisis stage, is nonetheless concerned that stringent budgets and declines in rates of enrollment growth will force a pattern of limited faculty expansion over the next decade. Most of Cornell's current tenured faculty were hired after World War II, and most have several years of effective service remaining before reaching retirement age. Thus, the university must decide whether to specify a percentage of faculty positions that must remain untenured, and hire new faculty to serve only the "probationary" periods before being ushered out as the time for tenure decision approaches, or gradually increase the proportion of tenured positions and face increasingly diminishing opportunities to bring in new blood. Both alternatives are clearly undesirable.

As with many institutions, tenure award practices at Cornell vary among departments. Some tend to award tenure earlier than others (it was found that the average time of service prior to gaining tenure at Cornell ranged from a low of three years in some departments to a high of six in others). Thus, the first step is to bring departmental tenure practices into line; otherwise, some departments will have only tenured faculty while other departments will have few. Other approaches, such as reappointing only the most able assistant professors and delaying tenure decisions as long as possible, are under consideration there.[46]

Cornell's concern that tenured positions not comprise more than a certain percentage of the total faculty complement is fairly common. While institutions tend to shy from specifically limiting the tenured segment to a specified percentage of the total faculty, as the tenure segment increases to more than about half evidence of alarm becomes apparent. Traditionally, the balance has been maintained through an approximate 50-50 distribution between the two upper (tenured) and two lower (untenured) ranks.[47] This approach is becoming less effective as attrition fails to open positions in the upper ranks and tenure is granted increasingly to faculty in the normally pretenure ranks. Because of this problem, pressures for nontenured professorships may mount.[48] As an interim step, institutions may be increasingly compelled to make the type of difficult reassessment currently underway at Cornell.

3. Tenure as a Recruiting Inducement: Granting Immediate Tenure

Academic tenure has been used as a recruiting inducement. As a practice it is subject to criticism, since it is one cause of large numbers of faculty in tenured positions:

> During a decade (1960s) when professors were in short supply, recruiters offered tenure on such a scale that many campuses are now afflicted with an oversupply . . . who refuse to make way for younger, more dynamic teachers.[49]

As practiced in this state, however, the award of immediate tenure does not seem a cause of such conditions. During the last half of the decade of the 1960s, 3494 new faculty were hired by Washington four-year institutions, private and public, as follows:

State Universities	1632 new faculty
State Colleges	1108 new faculty
Private Colleges & Universities	754 new faculty

Of these, 1933 (55 percent) were experienced and had teaching records at other institutions (specifically, for the state universities, 759 or 46.5 percent, for the state colleges, 835 or 75.3 percent, and for the private institutions, 339 or 44.9 percent, had previous relevant experience). None of the remaining 45 percent of new faculty appointments, all inexperienced personnel, involved granting of immediate tenure: probationary service was required of all these persons. Thus, tenure is not used as a recruiting inducement for inexperienced faculty members in Washington.

Immediate tenure is sometimes offered to experienced teachers, but even here is not an extensive practice, and it is generally restricted to the state universities. At the two public universities, 201 or 26 percent, of the 759 experienced faculty members were granted immediate tenure (the number of these who may have been tenured at the institutions in which they were serving when hired is not known). At the state colleges, less than one percent of the experienced faculty hired were given "instant tenure," and this was also the case (i.e., one percent) in the private colleges and universities.

Similar patterns are evident in the community colleges. Of the 573 new faculty hired since the 1969 Tenure Act became effective, 89 were granted immediate tenure; most of those afforded this status had teaching, practical,

or other relevant work experience. The remainder attained it because their contracts had been consummated by the effective date of the Tenure Act and they were automatically "grandfathered in," as required by the Act.

The AAUP guidelines governing probationary periods recognize institutional desires to observe and evaluate new faculty, even those with teaching experience, and accommodate probationary periods up to four years for transferees, including those who may have served maximum probationary periods (for the AAUP, seven years) at other institutions. Thus, even though the Association admonishes institutions to grant probationary credit for service at other institutions, it also recognizes the importance for colleges and universities to have the option of imposing probationary periods on experienced faculty.

The data suggest that Washington institutions exercise this option more often than not and restrict the granting of immediate tenure to experienced personnel. Thus, on balance, the utilization of tenure as a recruiting inducement does not seem a prominent feature of the hiring practices of institutions of this state, public or private.

One final word is appropriate. The offering of "immediate tenure" is not a decision left entirely to the department chairman or dean. Tenure is a governing board perogative, and it is exercised either directly by the board or the president acting in its behalf. Immediate tenure, therefore, as with other cases of tenure award. must be reviewed and approved. There are no alternate routes to tenure in the rules and regulations of the institutions: all cases are subject to the same review procedures, whether new appointments or old.

4. Academic Tenure for Administrators and Nonteachers

The logic of academic tenure as the bulwark of academic freedom does not seem to justify its extension to administrators and nonteaching personnel (with the obvious exception of librarians). Some who recognize the importance of tenure for faculty see tenure among administrators as undesirable, particularly if it denies a president the power to terminate. To effectively deny them this is to deny an important management tool.

The presence of tenure among administrators may explain why administrators and faculty are not frequently in conflict over it:

> . . .not all college administrators would be happy to see tenure die. Many officials hold tenured professorial posts in addition to their campus management roles. 'That way, if a guy goofs or tires of the pressures, he can resign his administrative post and sink right back into a very comfortable spot, set for life as a tenured faculty member. . . . It's a great security blanket.'[50]

This statement is an oversimplification. It may not be easy for an administrator to 'sink back' into his conjoint faculty slot, especially if his department's complement of faculty is filled and there are no funds budgeted for an additional salary, or if the chief administrative officer ardently seeks his removal. Yet, the statement recognizes that most administrators who have tenure have it because they were tenured faculty members before becoming administrators.

This accords with prevailing practices in Washington where administrators with tenure have it by virtue of simultaneous retention of a conjoint tenured

faculty appointment. The University of Washington's policy on this matter is descriptive:

> The tenure of a faculty member who holds an administrative position, such as that of dean or department chairman, extends only to the faculty position which he holds conjointly with such administrative position.[51]

Some have criticized the conjoint appointment option; they argue that there should be a 'management/labor' distinction between those who administer an academic institution and those who teach in it. Others, among them the presidents of several Washington institutions, take exception to this view. For them the industrial management analogy is inappropriate. They prefer to see administrators exercising active teaching responsibilities, performing in a conjoint capacity, and they feel this can be best achieved by allowing them to retain their faculty status. More than this, they argue that the best administrators are drawn from the top faculty ranks. If faculty are allowed to retain their professional rank and concomitant tenure, they will be more amenable to serving in administrative posts: if not, then not.

In many respects the issue goes to the heart of the role of faculty in an academic institution. Many believe that faculty should both teach and administer ("they are the institution"): restricting them to teaching leads to delegation of college administration to professional administrators, nonteachers. While the administration of colleges and universities by professional administrators is not a necessarily negative option, administration by faculty has the support of tradition.

The clearest cases of administrative tenure in Washington involve chairmen and deans, the positions also most likely to entail active teaching requirements. The percentages are the following:

Percentage of Deans and Chairmen Possessing Academic Tenure (in Instructional & Departmental Research Programs)

State Universities	97.2 percent
State Colleges	82.5 percent
Private Colleges & Universities	82.2 percent
Community Colleges	95.8 percent**

(**Community College Deans and Chairmen classified as "untenurable" presumably those lacking faculty tenure, are excluded. If included, the community college figure is 44.4 percent.)

Figures for the remaining administrative positions are affected by differing interpretations and definitional patterns, but they are revealing:

Percentage of Nonteaching Staff Possessing Academic Tenure

State Universities	26.9 percent
State Colleges	26.7 percent
Private Colleges & Universities	21.7 percent
Community Colleges	75.3 percent**

(**If persons in nontenurable positions are removed, the percentage becomes 81.6 percent. All persons in the "Non-teaching Staff" category at the Community Colleges are described as "Counselors and Librarians.")

When all persons in administrative and nonteaching positions are aggregated, 50 percent have tenure. When the public institutions are taken alone, including community colleges, the proportion drops to 42.8 percent. Tenured persons comprise 74.5 percent of the administrative ranks in private institutions. In comparison, portions of tenured persons in teaching ranks are lower:

Percentage of Headcount Teaching Staff with Tenure	
State Universities	34.4 percent
State Colleges	40.6 percent
Private Colleges & Universities	39.7 percent
Community Colleges	35.3 percent**

(**Includes full- and part-time teaching staff for comparability with other institutions. Generally, part-time Community College teachers are not tenurable. Part-time teachers comprise almost 60 percent of the reported headcount teaching staff.)

On the average, 36.6 percent of the headcount teaching staff of Washington institutions is tenured.

A recent study of academic tenure in major American universities revealed that although the total number of administrators is small in comparison with numbers of instructional personnel, the percentage of tenured administrators and noninstructional personnel is higher than the percentage of tenured teachers.[52] The patterns in Washington higher education are not at variance with these findings.

5. Prevalence and Distribution of Tenure

It is clear that not all university and college teachers have tenure. Many teaching faculty are serving probationary periods and have not yet attained tenured status. Large numbers of faculty are teaching on a part-time basis, and in many institutions, particularly the community colleges, tenure is not normally offered to part-time personnel. When all instructional personnel are taken into account, excluding teaching assistants, but including all professional teachers, probationary and nonprobationary, full- and part-time, 36.6 percent are tenured. Of the nontenured proportion, 58.5 percent are in "pretenure" ranks (assistant professors, instructors, and lecturers or they are probationary teaching faculty in the community colleges: the notion of "pretenure rank" is not directly applicable to the community college situation). Approximately 32 percent are community college teachers in "nontenurable" positions (usually part-time personnel). Those remaining, approximately 10 percent, are nontenured teachers at advanced ranks in four-year institutions.

If only full-time faculty are counted, the percentage of faculty with tenure rises. For the major segments of Washington higher education, the distribution is as follows:

Percentage of Full-Time Teaching Staff With Academic Tenure	
State Universities	55.3 percent
State Colleges	41.5 percent
Private Colleges & Universities	48.6 percent
Community Colleges	88.3 percent

The comparatively larger percentage of tenured faculty in the community colleges is attributable to provisions of the 1969 Tenure Act granting tenure to all then current faculty. If community college faculty are excluded, the percentage of full-time teaching faculty in the four-year institutions averages 50.8 percent (this includes private institutions). This figure is comparable with percentages elsewhere in the nation, as indicated on the following table:

Numbers and Percentages of Faculty Members, Total, Full-Time, and Tenured, in 68 Institutions of Higher Education in California, Illinois, and Pennsylvania, 1955 [53]

	Numbers			Percentages		
	Total (1)	Full-time (2)	Tenure (3)	(2) of (1)	(3) of (2)	(3) of (1)
52 institutions with less than 120 faculty members	2,949	2,342	1,240	79	53	42
6 institutions with between 120 and 200 faculty members	966	781	505	81	65	52
10 institutions with more than 200 faculty members	15,621	8,327	4,305	53	52	28
68 institutions	19,536	11,450	6,050	59	53	31

If only the "tenurable" ranks (associate and full professor) are included, the percentage of full-time teachers with tenure in Washington is still less than total, though it is quite high: 85.3 percent.

While some four-year institutions report a few tenured instructors, there are no lecturers (a rank below Instructor) with tenure. For the most part, the tenured teaching faculty are in the upper ranks, particularly the top two:

Headcount Teaching Staff With Tenure

	Instructor		Assist. Prof.		Assoc. Prof.		Professor	
	#	%	#	%	#	%	#	%
State Universities	1	(.01)	79	(5.9)	670	(68.5)	884	(89.2)
State Colleges	7	(12.9)	108	(20.6)	237	(65.4)	195	(88.2)
Private Colleges & Universities	16	(8.3)	127	(28.0)	190	(68.3)	225	(82.7)

Hence, 87.6 percent of the headcount tenured faculty are in the two top professorial ranks (these figures exclude community colleges).

As might be expected, because of probationary service requirements, most tenured teachers have extensive experience. This is apparent in the following figures:

Percentage of Headcount Tenured Teaching Staff
With More Than Six Years Experience

State Universities	86.8 percent
State Colleges	85.7 percent
Private Colleges & Universities	89.8 percent
Community Colleges	77.8 percent

A surprising proportion of tenured faculty in the four-year institutions have more than twenty years of experience:

Percentage of Headcount Tenured Teaching Staff
With More Than Twenty Years Experience

State Universities	33.3 percent
State Colleges	28.5 percent
Private Institutions	32.3 percent

As also might be anticipated, there is a strong relationship between tenure and highest earned degree. In the four-year institutions this is between tenure and faculty with doctorates, and in the community colleges it is between tenure and teachers with master degrees:

Headcount Tenured Teaching Staff
By Highest Earned Degree

	Bachelor		Master		Doctor		Professional	
	#	%	#	%	#	%	#	%
State Universities	38	(2.3)	289	(17.7)	1144	(70.0)	158	(9.7)*
State Colleges			171	(31.7)	367	(68.1)	1	(0.2)
Private Institutions	15	(2.7)	257	(46.1)	276	(49.5)	7	(1.3)*
Community Colleges	185	(12.9)	1025	(71.6)	69	(0.4)	6	(.04)

*Percentages do not total 100 as faculty with less than the baccalaureate degree are not listed.

Given the linkage between academic freedom and tenure, it might seem that the distribution of academic tenure would bear a relationship to academic discipline. Some subject fields are more "controversial" than others (e.g., the subject matter in law and the social and behavioral sciences may be considered less settled than, say, that in agriculture and the natural sciences) and a greater presence of tenure might be anticipated in these academic subject areas than in others. The data fail to reveal such trends or patterns in Washington institutions. Actually, something of the opposite occurs; agriculture, business, and the technical science professions, along with law, rank most highly in terms of proportion of faculty with tenure.

Percentage of Teaching Staff with Tenure
In General Academic Disciplines

	Universities	Colleges	Private Inst.	Com. Colleges
Agriculture & Natural Sciences	65.5	N/A	N/A	86.6
Arts & Letters	40.1	37.2	39.7	92.1
Business & Commerce	61.5	27.0	32.7	89.4
Education (& Phys. Ed)	50.9	46.4	33.1	92.6
Health Sciences	12.8	43.4	38.8	72.5
Law	62.5	N/A	50.0	N/A
Mathematics & Physical Sciences	45.8	50.7	52.2	91.1
Social & Behavioral Sciences	54.8	37.4	30.9	87.4
Technical Sciences	69.2	41.9	64.3	89.4

In view of these patterns, tenure seems more a function of seniority, rank, and highest earned degree than academic subject area. The uneven distribution among academic areas may also suggest different departmental tenure policies (a problem alluded to earlier) or comparative surpluses of qualified teachers in some fields.

These data indicate that the prevalence of tenure in Washington institutions is comparable to that in other states, and that tenured personnel in the four-year institutions are persons with advanced rank, advanced degrees, and extensive teaching experience.

6. Terminating Tenured Faculty

Many believe that once a faculty member achieves tenure, he cannot be dislodged from his position. Such an assumption is false. While it is usually more difficult to terminate tenured professors than nontenured faculty members (although this may be changing: see the section on the legal status of tenure), the possession of tenure does not preclude dismissal or the imposition of lesser penalties. (It has been stated that the major difference in terminating tenured and nontenured faculty is that with the former the burden of proof is on the institution while with the latter it is on the individual: this statement is probably accurate, but it is an oversimplification.)[54] On most campuses, tenured professors may be dismissed for incompetence, irresponsibility, physical or mental disability, or for other major causes. They also may be terminated for reasons of financial exigency or the discontinuance of instructional programs or departments.

Tenured faculty members have been dismissed from Washington campuses during recent years. Others have resigned rather than face the notoriety of a hearing. But their numbers are few, and it may appear that such disciplinary measures are not employed as frequently as they might be. Explanations for such infrequency are many; one cause may lie in the cumbersome and unwieldy character of termination procedures.

The AAUP accepts tenure termination "only for adequate cause, . . . or under extraordinary circumstances because of financial exigencies."[55] These two justifications, financial exigency and adequate cause, need separate treatment.

a. Tenure Termination For Financial Exigency

The AAUP's statement on tenure termination for financial exigency is direct:

> Termination of a continuous (tenured) appointment because of financial exigency should be demonstrably bona fide.[56]

The financial exigency must be real: beyond this, guidelines are not specified, but the likelihood of skepticism during an AAUP review is apparent. According to Professor William Van Alstyne (Chairman of the AAUP's Committee on Academic Freedom and Tenure), a school would have to be near bankruptcy before it could dismiss faculty for financial exigency without upsetting the Association. He states, "If a university were firing tenured members of the faculty while at the same time providing a half million dollar subsidy for the football team, for example, (the AAUP would) question it."[57] Professor Van Alstyne's example may be extreme. Such matters would be more difficult to decide if they involved staff imbalances stemming from decisions to drop required courses for undergraduates; the inability of some departments to cut back on tenured faculty after enrollments drop suggests the difficulty.

At the Fifty-seventh Annual Meeting of the AAUP, in the spring of 1971, a resolution on faculty participation and on termination because of financial exigency was adopted. Since it reveals something of the complexity of the problem, it is quoted in full here:

> The Fifty-seventh Annual Meeting of the American Association of University Professors shares the concern of all segments of the academic community over the effects of the severe economic difficulties presently confronting higher education. We are equally concerned, however, about arbitrary or simplistic actions by a governing board or a finance officer. Specifically, we refer to unwarranted cutbacks in educational programs, including the significance of those cutbacks for teaching personnel, both tenured and nontenured. The 1940 'Statement of Principles on Academic Freedom and Tenure' provides that tenure may be terminated 'under extraordinary circumstances because of financial exigencies' and that 'financial exigency should be demonstrably bona fide.' However, the 1940 'Statement' was never intended to be an open door for wholesale or arbitrary dismissals, and the 1966 'Statement on Government of Colleges and Universities' makes it perfectly clear that the most intensive faculty participation is required in such grave decisions. Moreover, we deplore the apparent tendency of many boards and administrations, which, when faced with an apparent budgetary crisis, turn first to retrenchments in the instructional budget and to the reduction of instructional staff rather than weighing very carefully the whole range of possible alternatives.
>
> The Fifty-seventh Annual Meeting therefore calls upon all institutions--including those not yet faced with the necessity of major budgetary reactions--to adopt orderly procedural standards for the review of priorities, and to insure that the principle of sound decision-making be applied in this currently critical area as well. Adequate faculty participation should be both substantive and procedural: <u>whether</u> retrenchments should be made, <u>where</u> they should be made, and <u>how</u> they should be made, are all matters of shared authority.
>
> (emphasis thus)

The policy statements of most Washington four-year institutions specify termination for financial exigency or discontinuance of departments or programs. Although financial exigency is not mentioned in the Community College Tenure Act, it is evident that it would be considered adequate cause. Indeed, Washington institutions appear to recognize or specify financial exigency as a cause for tenure termination with greater frequency than elsewhere. In a recent study of

tenure in public universities and colleges, of the forty sampled, only 21 specifically provided for such eventuality.[58]

Technically, therefore, Washington institutions have machinery for terminating tenured faculty when there is no money or need for them. There is little evidence of termination for financial exigency during recent years. So far the need for such action has not been great, and in the few recent instances of program elimination the faculty affected were placed in other positions within the institution.

b. Terminating Tenured Faculty For Cause

The AAUP also recognizes that tenure may be terminated for "adequate cause." Although this term is never specifically defined, references to "incompetence" and "reasons involving moral turpitude" in the 1940 Statement permit a variety of inferences.[59] To clarify the issue somewhat, at the Association's 1953 meeting, members adopted a resolution stating that "the tests of the fitness of a college teacher should be his integrity and his professional competence, as demonstrated in instruction and research."[60] Finally, in its "Working Glossary of Terms," the AAUP comments on the practices of various American institutions and implies that the constitution of adequate cause can be determined therefrom:

> As "adequate cause" is reflected in institutional regulations throughout the United States, it refers generally to issues of (1) demonstrated incompetency or dishonesty in teaching or research, or (2) gross personal misconduct which unfits the faculty member for association with students.[61]

Thus, integrity, professional competence, and moral turpitude seem to be the important elements. The lack of more precise definition accords with the Association's view that cause should be determined on a case-by-case basis.

An analysis of tenure practices of eighty American institutions, private and public, revealed that termination for cause is widely recognized. While ten merely state "cause" without further elaboration, more specific reasons also appear. Fifty-five mention "professional incompetence;" seven mention "crime" including treason; fifty-six indicate "immorality;" twenty-six specify "neglect of duty;" eleven include "incapacity or disability;" ten refer to "grounds in the 1940 Statement;" eleven identify "failure in institutional relationships" and a few state that "religious beliefs and activities" are causes for tenure termination.[62]

A more recent study also identified a variety of tenure termination causes. These are arranged by order of frequency on the following table:

Criteria for Termination of Tenure as Specified by Forty of Eighty State Universities and Land-grant Colleges Studied.[63]

Criteria for termination of tenure	Number of institutions
Immorality or misconduct	32
Professional incompetence	26
Neglect of duty	20
Financial exigencies	16
Incapacity or disability	14
Crime including treason	8
Discontinuance of department or program	4
Conviction of a felony	2
Dishonesty	2
Failure to perform the terms of employment	2
Rank insubordination	2
Conduct prejudicial to the institution	2
Refusal to perform assigned duty	2
Gross violation of professional ethics	2
Failure in professional growth	1
Failure in institutional relationship	1
Unprofessional action	1
Loss of overall effectiveness in university assignment	1
Bonafide reduction of staff	1
Failure to perform duties	1
Improper conduct injurious to the institution	1
Violation of academic standards and principles	1
Violation of university rules or policy	1
Failure to return from leave within the period specified	1
To illegally advocate overthrow of our constitutional form of government by force or violence	1

Washington institutions similarly struggle with the definition of "adequate cause." The reasons for which tenure may be terminated in Washington are arranged on the following table, ranked by frequency:

Criteria for Termination of Tenure Specified in
Washington Private and Public Institutions

Criterian	Number of Institutions Specifying
Neglect of Duty	9
Incompetence	8
Immorality	8
Physical/Mental Incapacity	7
Conviction of Crime	7
Insubordination	5
Violation of Institutional Policy or Regulation	5
Misconduct	4
Dishonesty	3
Doctrinal Departure	2
Breach of Signed Contract	2
Inefficiency	1
Discrimination of race, origin, religion, or language	1
Professional Deterioration	1
Member of Subversive Organization	1

In the community colleges tenure may be revoked only for adequate cause and by due process. Beyond this, the statute cites three specific acts which constitute sufficient cause: (1) any unlawful act of violence; (2) any unlawful act resulting in destruction of community college property; and (3) any unlawful interference with the orderly conduct of the educational process.[64]

The requirement that academic tenure be revoked only by due process points to another prevalent requirement of most tenure policies. While tenure may be terminated for major infractions, termination must entail the application of the fundamentals of due process. It is in the implementation of such procedures that the "adequacy" of the cause is determined.

c. Termination Procedures

In their analysis of the tenure policies of American institutions of higher learning, Professors Byse and Joughin identify four distinct stages of tenure termination practices:

-Informal adjustment and conciliation;

-Initiation of proceedings;

-Hearing; and

-Appeal.[65]

Although some Washington institutions are revising procedural requirements in their tenure policies, most specify these four stages in some detail.

(1) Informal Adjustment and Conciliation

Procedures for informal adjustment and conciliation are provided on most Washington campuses. The University of Washington's are illustrative:

> When a question arises concerning the termination of the services of a faculty member who has tenure, first the appropriate dean shall discuss the matter with the faculty member in personal conference. The matter may be concluded by mutual consent at this point.
>
> If the matter is not concluded, at the request of the dean or the faculty member, an Advisory Committee may be called into operation to offer its confidential advice to the parties. . . . The Advisory Committee shall consult privately with the dean, the faculty member, and others and shall proceed informally to effect a mutually acceptable adjustment if possible.
>
> If at any time during the preliminary proceedings the faculty member requests that the formal proceedings be held, these shall be initiated within one month or the matter shall be dropped.[66]

Attempts to resolve the matter also may be made at the departmental level. In the Community College Tenure Act no specific provision for informal conciliation is made.

(2) Initiation of Proceedings

Formal dismissal proceedings are usually initiated in the form of a written statement from the dean or administrator, functioning as the charging authority, to the faculty member in question. This written statement is, in effect, a statement notifying the faculty member of the specific charges. A hearing committee may be designated, and, in virtually every instance, the hearing committee will include faculty representation. In some institutions the committee is a standing body, in other cases it will be an ad hoc faculty committee specifically empaneled to hear the dismissal case.

The usual pattern is to give the faculty member time (thirty days) to prepare his case. He may also submit a written response to the official charges. The University of Washington Faculty Code's statement on proceeding initiation is again illustrative:

> A formal dismissal proceeding shall be commenced by a written communication from the appropriate dean or comparable administrative officer functioning as charging authority to the faculty member and to the Chairman of the Tenure Committee containing:
>
> (a) a statement giving the grounds for dismissal with sufficient particularity of the underlying facts to inform the faculty member of the nature of the charges against him;
>
> (b) a statement that if the faculty member makes a request within thirty days of receipt of the charging authority's statement, he is entitled to a hearing before the Tenure Committee;

(c) a copy of the Faculty Code including Tenure Hearing Procedures;

(d) a first list of witnesses.[67]

(3) Formal Hearing

Of the thirteen Washington institutions (four-year) requiring formal hearings in their tenure termination proceedings, eleven specify that the hearing boards must consist solely of faculty members. In one case the accused faculty member has the option of being heard before a faculty committee or board of trustees. The Community College Tenure Act requires that review committees be composed of members of both the administrative staff and the teaching faculty, but the teaching faculty members must be sufficient in number to comprise a majority of the committee membership.[68]

Hearing procedures provide for testimony of witnesses, presentation of evidence, rebuttal, cross-examination, taking of transcript, and counsel. At the community college level, the relevant statute specifies that,

> the review shall include testimony from all interested parties including, but not limited to, other faculty members and students. The faculty member whose case is being reviewed shall be afforded the right of cross-examination and the opportunity to defend himself. The review committee shall prepare recommendations on the action they propose be taken and submit such recommendations to the appointment authority prior to their final action.[69]*

*RCW 28B.50.863 requires the review committee to hear the case and make recommendations to the appointing authority (the board of trustees of the district) prior to final action. In a case in litigation at the time of this writing, a Washington court has ruled that the review committee has exclusive authority to make findings of fact, and the appointing authority is, thereby, bound by the review committee's 'recommendation.'

(4) Appeal

Provisions for appeal, the final major step in the termination process, are contained in most policies, although the precise appellate authorities will differ. Some schools provide for appeal to the President, others direct appeal to the governing board and still others involve both. Some provide for automatic governing board review of the hearing board decision, others require formal request for such review. The appeal procedures described in the University of Washington's Faculty Code are elaborate, but they illustrate the efforts this institution exerts to ensure exhaustive appeal procedures for tenured faculty:

> At the written request of the faculty member or the charging authority, the President shall review the case. (Then follows a series of statements concerning the basis of his review, opportunities to prepare and present briefs, etc.)
>
> If the President affirms the decision of the Committee, the matter shall be deemed closed unless the faculty member files notice of the appeal of the decision to the Board of Regents within ten days. . . .
>
> If the President disagrees with the decision of the (Hearing) Committee, he may reverse the Committee's decision, . . .and the matter shall be deemed closed unless the faculty member files notice of appeal of the decision to the Board of Regents within ten days. . . . (T)he President may (also) return the matter to the Tenure Committee with his objections specified. If the matter is so returned to the Tenure Committee, it shall reconsider the case. . . .
>
> . . .
>
> If the decision of the President is adverse to the faculty member, at the written request of the faculty member, the Board of Trustees shall review the case. (Then follows a series of procedures concerning such review, the preparation and filing of briefs, etc.)
>
> If the Board of Regents affirms the decision of the Tenure Committee, the matter shall be deemed closed. If the Board disagrees. . .(it) may make a final decision to this effect and thereby bring the case to

> a conclusion, or it may return the matter to the President for referral to the Tenure Committee with its objections specified. . . . After reconsideration, the (Tenure) Committee shall frame its decision and communicate it in the same manner as before. After study of the Committee's decision, the Board of Regents shall make a final decision.[70]

Appeal for tenured faculty members aggrieved by a decision of the hearing board is also recognized in the Community College Tenure Act, suggesting Legislative endorsement of this procedural element:

> Any faculty member dismissed (in accordance with the provisions of the Tenure Act) shall have a right to appeal the final decision of the appointing authority within ten days thereof in accordance with (the appeal provisions of the Administrative Procedures Act. Appeal is to the Superior Court.)[71*]

It is now clear that tenured faculty may be dismissed. It is also clear that the safeguards against arbitrary dismissal, and possible infringement of academic freedom, are elaborate. While the definition of academic due process employed by the American Association of University Professors is more desiderative than descriptive (Academic Due Process is defined by the AAUP as "a system designed to produce the best possible judgment in those personnel problems of higher education which may yield a serious adverse decision about a teacher"), its stress on faculty participation is realized in Washington institutional policies.[72]

*In 1971 the Washington Legislature enacted an Education Administrative Procedures Act (RCW 28B.19.010, et. seq.). This act applies to community colleges as well as to the public four-year schools. In the interest of consistency, the RCW 28B. 50.864 references to appeal in accordance with the State Administrative Procedures Act should be amended to refer to the Education Administrative Procedures Act.

d. Frequency of Tenure Termination

Possibly because tenure termination is an extreme sanction, possibly because the procedures it entails are cumbersome, possibly because the probationary period requirements are so effective that few inept faculty survive them, possibly because faculty members in trouble tend to resign rather than face a hearing, or possibly because of a combination of these and others, tenure termination procedures are not often invoked. Tenured professors have been removed through informal methods leading to voluntary resignation, and tenured professors have been removed through the application of formal termination procedures, but not often. Although evidence on the prevalence of incompetence among institutional faculties is lacking, it seems safe to assume that termination procedures are either employed less frequently than warranted, or they are employed with singular lack of success.

For the ten-year period 1960-1970, Washington four-year institutions report the recorded dismissal of seven tenured persons. The distribution is as follows:

Tenured Personnel Dismissed From
Washington Four-Year Institutions
1960-1970

State Universities	0
State Colleges	2
Private Institutions	5

Some tenured personnel have resigned after a question of tenure was formally raised. While many, if not most, of these cases would not likely be matters of record*, some are:

*Faculty representatives at Western Washington State College maintain that such resignations approximate one per year, per 500 faculty.

Tenured Personnel Resigning Following
The Raising of a Question of Tenure
1960-1970

State Universities	1
State Colleges	0
Private Institutions	5

Assessment of these figures must be tempered by awareness of several characteristics of higher education. First, the probationary periods are long and the review procedures governing the award of tenure, at least theoretically, are more rigorous than many other professional sectors. Tenure is not awarded to all. Second, the higher education community is generally more tolerant of unorthodoxy in belief and life style than other social or professional segments. Hence, there may be less likelihood of termination than would be the case in other areas of endeavor. Third, extensive opportunities for informal resolution of conflict exist, and these are buttressed by various opportunities for unobtrusive resignation. The effects of these opportunities are not apparent to the casual observer. Fourth, because tenure termination procedures are involved, lengthy, and costly, administrative officials may be reluctant to implement them. Finally, while the President and the governing board possess the ultimate power to hire and fire, fear of professional sanctions may induce caution.

7. Tenure, Incompetence, and Mediocrity

The presence of tenure termination procedures does not dispel the myth that tenured teachers possess lifetime job security with few obligations to

maintain professional competence. A belief that tenured professors teach fewer classes, counsel fewer students, and spend more time in nonteaching activities than their nontenured colleagues is common. Such attitudes are not restricted to the critics of tenure. Even some of its stauncher supporters recognize that incompetence and nonprofessional behavior exist among tenured faculty. The University of Utah's Tenure Commission makes such an observation in its report:

> The least satisfactory features of the tenure system, we have concluded, arise in the post-tenure period. While the relevant University regulations are calculated to facilitate dismissal of tenured faculty members who fail to measure up to acceptable standards of academic performance and professional responsibility, actual results are not necessarily in accord with theoretical expectations. Evidence presented to the Commission indicates that instances of tenured incompetence, unacceptable academic performance, or failure to observe professional standards of behavior, do occur within the University from time to time.[73]

A similar acknowledgement is made by Professor Machlup, a strong advocate of academic tenure:

> My doubts about the frequency and importance of cases of faculty deterioration due to tenure must not be mistaken for a denial of their existence. Some of us know of cases of this sort. We know of professors who were once promising but have not fulfilled the promise: they have not kept up with the progress in their fields, have not done any decent research in years, do not prepare their lectures, do not carry their share of the burden of the department, are not accessible to students; but, who, possibly, would still perform satisfactorily if they were not secure in their jobs, that is, if their contracts were subject to termination or renewal depending upon performance. Hence, with due reservations regarding the frequency and importance of actual cases in point, it must be granted that the tenure system may contribute to some deterioration in the performance of some professors and, consequently, may harm the institutions which are stuck with the retrograde members of the faculty.[74]

Professor William Van Alstyne (Chairman of the AAUP Committee on Academic Tenure and Freedom) concedes, "(There is) no doubt that among the tenured faculty are many who are grossly incompetent or who teach from yellowed notes." But he adds: "(that) no reason other than inertia prevents universities from eliminating this deadwood; these teachers stay on because no one sees fit to bring forth an appropriate complaint."[75]

The University of Utah Tenure Commission recognizes two approaches to a solution. The first involves abandonment of tenure and search for other means to cope with faculty delinquency, means better adapted to the "eradication of professional inadequacy than the tenure system" and which would provide at least equal protection for academic freedom. The second centers on strengthening the tenure system through post-tenure evaluation and other modifications in practices. The Commission recommends the second.[76]

The Tenure Commission's tack attests to the value of some recent observations made by President Henry Saltzman of the Pratt Institute (Brooklyn, New York). Because of the pertinance to this discussion, his remarks are quoted at length here.

> A dean or department chairman in a university develops so close a relationship with his faculty over the years that ambitious, energetic, qualified teachers who earn tenure are frequently permitted to age like fine wine, without being disturbed. . . . (T)he behavior and attitudes of supervisors of tenured faculty--deans and department chairmen--are the key to the matter. These members of 'middle management'. . .are either unwilling or incapable of properly supervising, evaluating, and disciplining the tenured faculty. This weakness gravely threatens the tenure system.

> Poor monitoring of the tenured faculty results not from ill will or conspiracy. It is a reflection of a problem of human nature. Deans, chairmen, and tenured faculty have worked and virtually lived together for a long time. Often they are good friends. Indeed, senior members of a faculty often constitute an extended family system: Chairmen become godfathers to the children of tenured faculty members and frequently help each other in times of illness or other serious difficulty. After a while, a familial, rather than a managerial, relationship is established.[77]

Like the Utah Tenure Commission, Saltzman points to the need for performance criteria, discipline, and individual accountability in the post-tenure period.[78]

While many acknowledge a 'post-tenure letdown,' others are not willing to readily accede its cause to tenure. For example, in addressing the problem of professional deterioration after tenure is attained, Professor Machlup demands empirical evidence of the linkage between the two. He suggests the culprit may not be tenure but uninspiring work environments.[79]

A number of factors probably contribute to professional deterioration. A cause and effect relationship between tenure and professional stagnation is not easy to demonstrate, and it may not exist, but it is clear that the presence of tenure seriously complicates remedial surgery, both on an individual and collective basis.

Professor Machlup recognizes the potential seriousness of this problem:

> Assume a new president takes office and finds a large part of the faculty in the category of deadwood by the higher standard of excellence (to which he aspires). To remove this deadwood quickly would be difficult or, at least, very expensive. Some faculty members may be willing to accept premature retirement, others, large separation payments (say, three years' salary) (sic), still

> others, assignment to nonteaching positions at the institution. Such a program, however, may be too expensive for the institution, and without such a program the unsatisfactory professors must be retained until they retire on schedule. This involves waiting for several years, and the president, however impatient, may have to settle for a very slow improvement of the faculty. Instead of doing it in three or four years, it may take him ten years.[80]

This is a serious disadvantage of the tenure system, and it is one that should not be minimized, but it is also a problem that can be exaggerated. The need for a college or university to raise its standards across the board is remote. The prevalent pattern is for some departments to reflect higher levels of competence and prestige than others, and, accordingly, the need to upgrade faculty is more likely to be faced at the departmental level.

Again, the existence of tenure clearly makes it difficult for a department or an institution to replace mediocre faculty. Unless effective post-tenure evaluation procedures are developed and employed, the alternatives are enlarging the faculty (adding new while retaining the old) or awaiting the retirement of the less productive members. It is clear that tenure is an obstacle to faculty upgrading, and there is no easy way to overcome it.

E. The Legal Status of Academic Tenure

Academic tenure's legal status is a complex subject. It is treated here in a brief and general fashion, with the focus on historical development and recent trends in its definition. (For those who prefer a more complete or detailed investigation, leads for further inquiry are footnoted.)[81]

Washington courts and legislatures have recent histories of supportive responses to tenure. A state tenure law applies to teachers in the public schools. A recently enacted Community College Tenure Act applies to faculty in the two-year public colleges. And, although subsequently vetoed by the Governor, a tenure act for faculty at the University of Washington and Washington State University (then the State College of Washington) was enacted by the 1945 Legislature. Finally, Washington courts have recognized the application of procedural due process in tenure termination cases and, accordingly, the tenets of academic tenure policies of the public four-year institutions.

1. Tenure and Washington Statutes

With respect to the public schools, the Legislature in 1961 enacted a continuing-contract law, with characteristics of a tenure statute, to cover teachers. The legislature's approach requires some explanation. Technically, two statutory routes to academic tenure for school teachers prevail in this country. The first, embodied in continuing-contract laws, provides for an annual contract automatically renewed each year if the teacher is not notified of

nonrenewal by a specified date. The second, following more closely the tenure path, usually specifically prohibits dismissal except for stated causes and after the application of procedural due process, particularly, formal notice and a hearing.[82] The Washington Legislature combined elements of both, creating a third path: Washington public school teachers are covered by a continuing-contract statute that entails elements of an academic tenure law. They must be notified of nonrenewal for the following term prior to April 15; failure to so notify is tantamount to renewal. If the teacher is notified his contract will not be renewed, the notification must specify the causes of the action. On request, the teacher must be afforded a hearing within ten days. He may engage counsel and produce witnesses, and he must be informed of the outcome of the hearing (held before the board of directors) within five days of its conclusion. If all of these conditions are not met, the teacher is presumed reemployed.[83] Thus, the Legislature has extended a form of tenure to public school teachers.

Legislative support for academic tenure is not limited to the public school sector. The 1945 Legislature passed a tenure act for the University of Washington and Washington State University. This act, House Bill No. 441, was brief but comprehensive. It extended tenure ("the right of a person to hold his position during good behavior and efficient and competent service. . .not to be removed therefrom except for cause") to all permanent teachers. Permanent teachers were defined as professors or associate professors, assistant professors after

three years of service, and faculty in the lower ranks who had been employed for the four years immediately predating the act. Appointment from the faculty to an administrative position, including the presidency, would not deprive a teacher of his tenure status. The act provided that tenured faculty could be removed for incompetency, neglect of duty, physical or mental incapacity, dishonesty, immorality, or conviction of a felony involving moral turpitude. Procedural due process was required in tenure termination cases. (Such due process included service of notice and a hearing with counsel present.) Hearing boards would consist of five faculty members selected by the faculty senate. A transcript of the hearing and the decision had to be transmitted to the governing board within thirty days. Failure to meet this requirement would precipitate a second hearing before the governing board itself. In the final analysis, the question of removal would be determined by the governing board.

This simply-stated act contained most of the aspects of a comprehensive tenure system. Although enacted, it never became law; the Governor vetoed it because it might have jeopardized the postwar prospects of faculty serving in the armed forces. In his veto message he stated that such legislation should await the termination of the war and the return of these veterans. Neither this act nor another tenure statute for four-year institutions was subsequently enacted by the Legislature.

Legislative endorsement of academic tenure in higher education was, however, again manifested in 1969 when the Community College Tenure Act was enacted.

This act is discussed elsewhere in this report, and it need not be reviewed again here. Suffice it that the statute provides for probationary employment periods (three years), award of tenure upon completion of the probationary period, tenure termination only for cause, and the application of procedural due process--notice and hearing--in tenure termination cases.[84]

Since the public four-year institutions are not covered by a state tenure statute, the matter is left to the individual governing boards, presumably under their statutory responsibility to "employ the president, his assistants, members of the faculty, and other employees of the institution, who, except as provided by law, shall hold their positions, until discharged therefrom by the board for good and sufficient reason."[85] As stated elsewhere, the trustees and regents have adopted tenure policies (or a 'nontenure policy' in the case of The Evergreen State College) for each institution, and these (except for Evergreen) contain all of the major components of tenure systems discussed above. Although they are not statutes, they fall into the category of "forms of sublegislation with the force and effect of law."[86]

2. Professional Associations and Academic Tenure

Until relatively recently, the interpretation and application of public institution tenure policies did not extensively involve the courts. The reasons for this were several. Until recently at least, faculty members were not considered litigious by nature, the costs of formal controversy are high (usually borne

personally), the burden of proof is often on the teacher, and judicial decisions may not be reached for months or years after a faculty member is separated. In addition, the extra-legal hazards are great: to sue and lose establishes a record that may prejudice one's chance for employment or advancement. To sue and win will not usually get the job back and is likely to warn other institutions that the contestant is an irascible professor, having the same effect as losing.[87]

Faculty members have sought judicial remedies, and some of the more important court decisions are examined below, but the majority have sought redress through professional channels, particularly the American Association of University Professors, and the number of cases reviewed during recent years by the AAUP far exceeds the number heard in the courts.

Requests for AAUP assistance in local disputes are usually made either by the aggrieved teacher (who need not be a member of the Association) or the local (campus) chapter (in some cases, administrative officials of the involved institution may request it). The AAUP usually attempts to present itself as a neutral observer, at least initially, and in practice it is often accepted as a mediator by both parties. Because of this stance, informal or private settlements often result.

When mediation is impossible, the AAUP proceeds through an investigation by an ad hoc committee composed of teachers from outside the involved institution. These committees are not bound to the actual controversy; rather, they are instructed to go beyond it and examine the general conditions affecting

academic freedom at the institution. Hence, such matters as the adequacy of the institution's tenure system, the overall attitude of the administration, etc., are frequently covered in ad hoc committee reports.

If the published report (reports may be published in the AAUP Bulletin) records a serious situation that is not corrected before the Association's next annual meeting, Committee A (the Committee on Academic Freedom and Tenure) may recommend that censure be imposed. Specific reforms are made requisite to the lifting of this sanction. It will remain in effect until "the Association, upon reexamination, determines that the general academic climate has improved, minimum standards of procedural fairness are assured, and an appreciation of academic freedom is developed."[88]

A partial employment boycott may be the result of an institution's appearance on the AAUP's censure list. Presumably, professors are reluctant to seek or accept employment at a censured institution. The AAUP does not, however, impose an obligation on its members to refuse such employment, since it believes such action might harm innocent students and faculty members. In one case (St. John's University), the AAUP recommended that the regional accreditation association reconsider the institution's accredited status in light of the AAUP's findings; apparently this was an isolated event.[89]

A number of American colleges and universities have been censured by the AAUP. In its Handbook on Tenure, the Association lists 62 institutions censured between 1930 and 1967. A lesser number of institutions are represented on a listing of committee reports that did not result in censure.[90]

Washington institutions are represented on both lists, and AAUP censure was extended to two of them. Central Washington State College was on the AAUP censure list from 1940 to 1948, and Western Washington State College was on it from 1941 to 1944. Committee reports were prepared on the University of Washington, Washington State University, Eastern, and Gonzaga.[91]

The tally for Washington is as follows:

Washington Institutions and
AAUP Sanctions

Censured:	
Central Washington State College	1940-1948
Western Washington State College	1941-1944
Ad Hoc Committee Reports:	
University of Washington (2)	1917, 1956
Washington State University	1937
Eastern Washington State College	1957
Gonzaga University	1965

A few additional incidents are not suggested by this list. In 1917, an effort to censure Central failed to win a consensus at the annual meeting of the AAUP.[92] In 1956, the Association indicated that earlier University of Washington actions concerning the 1949 termination of two controversial faculty members should have merited censure, but such belated action by the AAUP, especially in view of the change in climate evidenced by appointment of a noted philosophical anarchist to an honorary lectureship, was viewed as inappropriate.[93]

The issues involved in these cases indicate the range of the Association's interests, and, perhaps, something of the fragile nature of academic freedom.

In the 1937 report on Washington State University (then the State College of Washington) the issue centered on a novel written by a member of the english department faculty (who had been notified previously that he would be reappointed for the following year). The novel disturbed the dean and some department faculty members, and the dean ordered the book withdrawn from public sale in the school book store. Two weeks later the president informed the faculty member he would not be reappointed because of his involvement in a student strike. The novel was mentioned during the discussion. The AAUP found that the late notice of nonreappointment violated standards of academic tenure, and since it was the book that constituted the primary issue, the action denied freedom of expression to a faculty member. Further action in this case was not reported, but since the College (University) was not censured, the case was probably settled internally.[94]

The Western Washington State College case is a comparatively rare example of AAUP intervention in the dismissal of an administrator. The president of the college was dismissed in 1939, largely because of a series of charges filed in 1935 against him and various faculty and students by five Bellingham citizens. The Board of Trustees exonerated the president of the charges in 1938, but it subsequently informed him of his termination. The only charges mentioned in the dismissal notice were those filed by the five citizens. According to the AAUP report, the Governor either was or became an opponent of the president

of the College and sought his dismissal, or the trustees yielded to pressures from the president's critics. The AAUP report pointed to the power of the Governor to dismiss trustees as a source of control over the institution, and it recommended legislation that would preclude the repetition of such incidents.

In defending its involvement in a case centering on dismissal of an administrative official, the AAUP stated it would continue to do so when "the dismissal of such an official indicates the existence of improper control of an institution, political or otherwise, threatening the academic freedom or the tenure of the faculty, or freedom of speech in connection with the educational program of the institution." Censure was imposed, and it remained in effect until 1944. Since there was no annual meeting of the AAUP that year (because of the War), specific comment on the decision to withdraw censure is lacking.[95]

The remaining censure case involved a Central Washington State College professor who departed to travel in Mexico before the close of the spring term, and who did not give final examinations or attend commencement, as required. He was charged with being absent without leave, defiance of executive requests, and infidelity of service. The AAUP found no substance to the charges; instead it reported evidence of misunderstandings regarding permission for the professor to be absent from the commencement exercises. The Association felt that such absence, even without permission, was insufficient to warrant dismissal. Its censure continued in effect until 1948.[96]

These cases illustrate the role of one professional association, the AAUP, in controversies occurring in Washington institutions. Again, until recently

professional associations were more actively involved than the courts in tenure termination cases, largely for the aforementioned reasons, but this does not mean the courts have been silent, nor does it mean these trends will continue.

3. Tenure and the Courts

While judicial statements on academic tenure have not been extensive, they appear to be on the increase, particularly as nontenured faculty turn to the courts for clarification of their employment relationships. In considering how the courts have viewed tenure it will be helpful to review rulings on the employment rights of tenured and probationary faculty separately.

a. The Courts and Tenured Faculty

In most major cases on faculty dismissal heard from the end of the Civil War through the first half of the Twentieth Century, the principle that "trustees and regents, unless the statutes provide to the contrary, were empowered to dismiss professors at will" was upheld.[97] Notable departures did not occur until mid-century. An example is a 1954 case involving dismissal of a tenured faculty member from the University of Nevada. The professor, head of the biology department and president of the Nevada chapter of the AAUP, was opposed to the relaxation in admissions policies advocated by the new president, and he criticized them through an article published in a national journal. Informed by the president that his concern should be biology and not admissions, the professor

was subsequently notified to appear before the governing board at a hearing on his continued employment. He was dismissed when the board found him guilty of 'insubordination.'

The professor successfully appealed to the courts: the governing board's order was vacated by the Nevada Supreme Court on the basis that the professor's actions were his legitimate prerogative. For the court, differences of opinion between a teacher and an administrator did not justify termination of a tenured appointment.[98] The case centered on adequacy of cause for tenure termination, but it revealed judicial recognition of academic tenure.

Washington case law appears to accord with national trends. One Washington case is frequently cited in reference to judicial rulings on tenure. The case, Nostrand vs. Balmer (subsequently, Nostrand vs. Little),[99] while also not directly involving tenure, recognized the right of tenured faculty to due process.

The controversy involved two University of Washington professors who contested the constitutionality of a state law requiring faculty (and public employees) to swear to a loyalty oath. In upholding the statute's constitutionality, the State Supreme Court ruled that (1) states have power over public schools and public institutions of higher learning, including the power to protect students against the possible exercise of subversive influence by their teachers, and (2) they have the right to investigate the qualifications (including the loyalty) of employees paid by public funds. It ruled that the University must require the professors to sign the oath.

The case was appealed to the U.S. Supreme Court on the ground that the act was violative of due process provisions of the Federal Constitution. since it provided no hearing by which an employee could explain or defend his refusal to take the oath. The federal Supreme Court vacated the state court's judgment and remanded the case to it for passage on the question (Justice Douglas dissenting).

On reconsideration, the Washington Court recognized that the two professors, who had never actually refused to take the oath, had certain tenure rights. It stated there was no vested right to public employment in the State of Washington, "unless employees have some tenure rights provided by law." Aside from such tenure rights, the power to discharge was absolute. Public employees refusing to sign the oath were not entitled to a hearing. But if an employee had tenure rights, then he must be afforded the hearing his contract of employment (his tenure) called for. For the Court, these tenure rights (University of Washington) included the right to written notice of charges, a hearing, the right to counsel, etc. Removal could be only for adequate cause. While refusal to sign the oath might constitute adequate cause, this could not be determined without the application of the required procedures of due process. By implication, nontenured professors were not entitled to these safeguards unless also required by governing board policy. Hence, institutional authority to grant tenure, and thereby certain employment rights not afforded other public employees, was upheld by the courts of this state, and the rights of tenured professors found a place in Washington case law.

b. The Courts and Nontenured Faculty

The above opinions do not settle the procedural rights of nontenured faculty. If anything, they suggest there are none. If this is the case, it is an assumption being increasingly called into question. The ruling in the Nostrand case was that procedural due process, in accordance with the relevant tenure policy, had to be followed when dismissing tenured personnel. It now seems evident that the courts may require the application of some form of procedural due process in cases involving nontenured faculty dismissals as well. While this has not yet been unequivocally held by the Supreme Court, its recognition seems reasonably certain, especially if violation of constitutional rights is alleged. Indeed, Professor William Van Alstyne (Duke Law School) concludes that affording procedural due process to persons facing discharge from public employment has been virtually decided. For him, the "remaining issue is the determination of the extent and form of procedural due process on a case-by-case basis."[100]

The question is not whether an institution may fire a nontenured faculty member (or a tenured faculty member for cause), but whether it may do so in an 'arbitrary and capricious' manner: whether it may simply refuse to renew the contract of a probationary teacher or whether, in so doing, it must provide a statement of the reasons for the action and opportunity for hearing. Present judicial disagreement appears to be over which procedures, if any, must be afforded nontenured academicians in the event their public educational employers decide not to retain them. On the basis of recent court (and a National Labor Relations Board Examiner's) decisions, some procedures will be required.

In an attempt to resolve conflicting decisions in the lower courts, the U.S. Supreme Court is hearing (Spring, 1972) two cases involving the dismissal of nontenured professors.

The first ("The Sindermann Case"), concerns a teacher at Odessa Junior College whose contract was not renewed for the 1969-70 school year. He claimed that the college administration did not reappoint him partially because of his association with a group seeking to convert his junior college into a four-year institution (a move opposed by the president and the governing board). As president of the Texas Junior College Teachers Association, Sindermann was fired because he took time away from his teaching duties, presumably without permission, to testify before the state legislature. The college administration said it owed no contractual obligation to Sindermann since the college had no tenure system and all teachers were on one-year contracts. The district court agreed and dismissed his suit. The Court of Appeals, however, reversed the ruling claiming that, "What is at stake is the vindication of constitutional rights--the right not to be punished by the state or to suffer retaliation at its hand because a public employee persists in the exercise of First Amendment rights."[101]

This finding runs counter to the holdings of other courts (hence, the 'judicial disagreement'). The Tenth Circuit Court has held that nontenured faculty members have no rights after the expiration of their contracts, "even if the reason for their nonreappointment was their exercise of a constitutionally protected right such as free speech."[102] The First Circuit Court requires a detailed statement of reasons for nonreappointment and access to one's file,

but it does not require a hearing. The Fifth Circuit Court has held that if the nonreappointment occurs because the teacher exercised his constitutional rights, then he must be afforded the full hearing required in tenure cases.[103]

A second nontenured professor dismissal case will also be reviewed by the Supreme Court. In this, the "Roth Case" (Roth vs. Board of Regents), a U.S. District Court order to Wisconsin State University at Oshkosh (now part of the University of Wisconsin) to grant a hearing to a nontenured faculty member whom it had not reappointed is being appealed. The teacher claims the nonrenewal decision was in retaliation for his criticism of the University. Roth was an assistant professor on a one-year contract, without tenure and in his first year of teaching. He was notified of nonrenewal five months before the end of his contract (in ample time to seek appointment elsewhere). Moreover, he was unstigmatized by published evidence playing on his reputation or character, facing no grave hardship in finding employment elsewhere, on a one-year contract, and being not renewed rather than terminated during the term. In spite of the University's apparent need to preserve discretion in evaluating probationary faculty before granting them tenure and fear that elaborate due process in nonrenewal cases might force on it a form of instant tenure, the Court concluded that procedural due process required a statement of reasons for nonrenewal, to be provided on request, and a hearing for the teacher to respond to the stated reasons, also to be provided on request. The Court's statement on the hearing illustrates the concept it envisaged:

> At such a hearing the professor must have reasonable opportunity to submit evidence relevant to the stated reasons. The burden of going forward and the burden of proof rests with the professor. Only if he makes a reasonable showing that the stated reasons are wholly inappropriate as a basis for decision or that they are wholly without basis in fact would the university administration become obliged to show that the stated reasons are not inappropriate or that they have a basis in fact.

One further case, Poddar vs. Youngstown State University, should be considered here. Poddar, an assistant professor at Youngstown State University, a native of India and a naturalized American citizen, was notified in June, 1970 (one year's notice) that his contract would not be renewed at the end of its term, June, 1971. The University declined to give him a statement of the reasons for its action, claiming that such notice would be in violation of the institution's rules and regulations. Poddar argued that the University's actions, nonrenewal and refusal of a promotion, were prompted by his criticisms of discriminatory practices and his efforts to organize the faculty. Thus, they violated his First Amendment freedoms and his civil rights. Moreover, in refusing to specify the charges and afford him a hearing, the University violated his rights to due process under the Fourteenth Amendment.

The U. S. District Court held that "the defendant university's termination of plaintiff's employment, by failing to renew his contract of employment without disclosing the reasons for such termination, constituted arbitrary and capricious conduct prohibited by the due process clause of the Fourteenth Amendment, and violated plaintiff's rights under the federal civil rights statutes."[104] The Court enjoined the University from refusing to renew the contract until Poddar

was given a statement of reasons for his dismissal and an opportunity for a hearing to contest the decision. At the hearing he was to have the opportunity to be present with counsel, to submit relevant evidence, to confront and cross-examine witnesses, and to be notified of the decision within a reasonable time.[105]

Such rulings are coming not only from the courts but from at least one regulatory agency as well. Recently, a National Labor Relations Board examiner ordered the reinstatement of three nontenured faculty members at Lawrence Institute of Technology (a private college in Michigan) because nonrenewal of their contracts was attributable to their roles in organizing faculty, specifically their activities in the local chapter of the AAUP. The examiner stated that in not renewing their contracts, the college had violated the National Labor Relations Act prohibiting employers from interfering with employees' rights to organize and engage in collective bargaining. The ruling, reportedly to be appealed by the institution to the full NLRB, represents the first application of the act's provisions to an institution of higher education.[106*]

There are, again, rulings on the other side of the issue (e.g. Schultz vs. Palmberg,[107] a Wyoming case in which the court ruled, "A teacher who has not had the privileges of tenure incorporated in his teaching contract simply cannot claim the benefit of tenure if such a system is to survive at all."), but a trend to the option of due process in all cases of nonrenewal is evident.

If this trend continues, it seems likely that many of Washington's public four-year institutions' procedures for probationary faculty appeal will prove

*This ruling was overturned by a special three member panel of the NLRB on April 6, 1972. The panel held that LIT did not engage in unfair labor practices when it refused to reappoint the three faculty members.

inadequate. These appeal procedures are usually less clearly defined than those applying to tenure termination cases, and specific requirements for notice and hearing are not often provided.

There are a few exceptions, although most are recent. The University of Washington's Faculty Code was amended during the Fall 1971 term to provide nontenured faculty members the right to a hearing before one of two committees, depending upon the nature of the issue. Improper nonrenewal cases are heard by the Tenure Committee, and regular tenure termination procedures are followed, except that the burden of proof is on the nontenured faculty member (were he tenured, the burden would be on the charging authority). Other cases are heard by the Grievance Committee.

Recently adopted procedures at The Evergreen State College are also relevant (Evergreen does not employ tenure in the traditional sense, and these provisions apply to all faculty). A person whose contract is not being renewed (nonretention, or nonrenewal of contract, would occur only in cases of lack of professional development, etc.) is entitled to an adjudicative procedure, initiated only at his request, providing for a hearing, appeal, etc. In all cases of nonrenewal a statement of reasons accompanies the notice. This must be forwarded one year prior to lapse of the current appointment (Evergreen faculty appointments are normally for three years). Evergreen's procedures for 'probationary' faculty appear to be the most complete of the public institutions.

Somewhat in recognition of apparent legal trends, the American Council on Education recently published guidelines concerning written reasons for the nonrenewal of untenured faculty members' contracts.[108] An important distinction between statements in 'termination' cases and those in 'nonrenewal' cases is drawn. "Unlike statements in contract termination cases, statements of reasons in contract nonrenewal cases are explanations, not charges of wrongdoing or incompetence. Statements of reasons formally need be no more than a simple indication of fact: 'The institution has deleted the program in which you serve, or 'Under prescribed procedures, you have been judged not to have published sufficiently for retention.[109]

This distinction reveals that important differences between tenure termination and contract nonrenewal remain, and, accordingly, tenure retains something of its traditional substance. At the same time, the extension of procedural safeguards to all members of the teaching community abolishes a major logical fallacy in a system built on the argument that tenure is essential to academic freedom--the denial of tenure's safeguards to the most vulnerable segment of that community.

Thus, while the courts have not extended tenure to probationary faculty, they have virtually prohibited their dismissal, actually the dismissal of all faculty, for the legitimate exercise of their Constitutional rights. Hence, it seems clear that academic tenure is not threatened by the courts and there seems little likelihood that it soon will be invalidated.

III. CONCLUSIONS

Tenure is variously blamed for many (if not most) of the problems of higher education; this blame is misplaced. Tenure is not the cause of the ills of academe, imagined or real, although it can contribute to them To the extent that it conduces to sloth or mediocrity, confounds the elimination of incompetent faculty, diminishes professional growth, or denies accountability, and tenure does some of all of these, it will figure in these ills.

Tenure is usually presented as the shield of academic freedom. But as an indispensable safeguard to academic freedom it has been oversold. Tenure has failed to withstand concerted attacks on academic freedom in the past, and its presence is unlikely to preclude repetitions in the future. But if tenure were abolished, the effects could be serious and widespread. Institutions and systems would be subjected to censure by professional associations. Faculty members would turn to union organization and collective bargaining in increasing numbers, and administrators would have to find extra funds for increases in salaries as faculty sought recompence for the employment security previously provided by tenure. Because of these effects, and others, and because it is an important tradition in American higher education, tenure is not in danger of hasty abolition, nationally or locally.

Because tenure's emphasis has been on the 'academic freedom argument, little recognition has been paid its employment security aspects. Tenure provides a form of job security for those who have it, and, as such, it accords

with merit systems in the public service and the employment security afforded by collective bargaining and union organization in the private sector. But there are differences. Required probationary periods bear little resemblance to other sectors, and elaborate requirements for faculty involvement in award and termination processes render tenure unique among employment security systems.

This dimension, faculty involvement in virtually every aspect of tenure, is at the bottom of most criticisms of it. Faculty involvement in such matters limits managerial discretion and minimizes accountability. These conditions, though tempered by other considerations not evident to those uninvolved in campus decision-making processes, provide focal points for critics of tenure.

It is within the purview of a state legislature to prohibit academic tenure on public campuses. No legislative body has taken such action, and it seems likely that none soon will. Aside from the confusion such an act would precipitate, it would run counter to the stance that legislative bodies nationally, and in Washington, have taken on tenure. Traditionally, the actions of these bodies have been supportive, and tenure systems are embodied in public law across the land because of them. Moreover, the courts appear to show signs of increasingly protective postures on the application of procedural due process to tenure termination and contract nonrenewal cases.

The most likely sources of problems in Washington tenure policies and programs were discussed earlier. These involve probationary periods of differing and sometimes brief lengths, the lack of middle ground between tenure

and probation, tenure among the nonteaching segments, the lack of procedures for notice and hearing in probationary faculty contract nonrenewals, the absence of comprehensive post-tenure evaluation programs, and the cumbersome nature of tenure termination procedures. While few institutions manifest shortcomings in all of these particulars, all reveal evidence of shortcomings in some.

These are some of tenure's negative facets; positive findings are also apparent. In terms of some of the more popular misconceptions, it is clear that tenure is not as automatic or pervasive as many assume. If all teachers are counted, slightly more than one-third have tenure. If only full-time teachers are counted, the percentage rises to one-half. It is evident that tenure is not awarded willy-nilly to all who choose careers in higher education. This finding is borne out by the extensive teaching experience of tenured teachers. Most have more than six years, and an impressive percentage has more than twenty. Accordingly, evidence of tenure's abuses, with the exception of a low incidence of tenure terminations, is sparse.

This does not mean that tenure as practiced in this state can stand no improvement. Modifications designed to improve efficacy and achieve more direct accountability have been proposed in other geographical areas. Several seem appropriate to Washington.

Most tenure problems are amenable to practical solutions. The recommendations of this report accord with that conclusion. In all instances they involve modifications designed to correct inconsistencies and render tenure systems more accountable.

A. Tenure With Accountability

1. Probationary Period Requirements

Required probationary periods in Washington institutions range from none (in the case of Evergreen) to three years (in the community colleges), and five, six, and seven years in the four-year schools. The shorter probationary periods (three and five years, which, in terms of forcing a decision, are closer to two and four years) may be inadequate. Problems can occur as the short probationary period forces a tenure decision before formal training requirements are met, or before scholarly competence is proved.

Tenure in the community colleges involves particularly brief probationary period requirements, and the tenure award process, governed by statute, appears the most automatic of any in Washington higher education. The law requires notification of renewal prior to the last day of the winter quarter (mid-March). Once the third year of teaching is completed, tenure must be granted. Thus, the actual maximum probationary period in the community colleges approximates two and one-half years (since the decision is made during the third year). This is not much time to decide on a lifetime commitment.

These comparatively brief probationary period requirements should be reexamined. There is little agreement on what constitutes an adequate probationary period (although the AAUP accepts seven years), and some differentiation between the community colleges and the four-year institutions may be justifiable. But even so, the current three-year probationary period is probably inadequate.

2. Notification and Hearing for Nontenured Faculty

A deficiency that may increasingly haunt institutions is the lack of provision for notice and hearing in cases of probationary faculty contract nonrenewal. Few institutions require this, and the Tenure Act does not provide it for community college faculty. While it cannot be definitely stated that the courts will require such procedures, since the issue is in litigation, the propensities of many of the lower courts are clear.

Such requirements are viewed with alarm by some college officials, particularly as they envisage the application of existing tenure termination procedures to all probationary faculty, thereby raising the spectre of 'instant tenure.' However, while the institutions may lose some of their flexibility in summarily dismissing untenured faculty, this need not be the same as instant tenure.

Unless the courts specify more rigorous requirements than they have so far, important procedural distinctions between tenure termination and probationers' contract nonrenewal will remain. Guidelines prepared by the American Council on Education demonstrate this. They involve the routine assembly and filing of information necessary to decisions concerning contract renewals, the development of appeal procedures, training in these procedures, designation of institutional spokesmen, written criteria for personnel actions, the avoidance of unacceptable reasons for nonrenewal (denial of Constitutional rights), written statements of reasons for nonrenewal (which, unlike termination cases, are explanations, not

charges of wrongdoing or incompetence), and special machinery for the handling of disputes.

A recently adopted AAUP statement on contract nonrenewals echoes these themes. It requires advising the new faculty member of the substantive and procedural standards underlying renewal and award of tenure. He is to be informed of the time such decisions are normally made and given an opportunity to submit material he feels will be helpful. Should his contract not be renewed, he is to be notified of this in writing and, on request, advised of the reasons. He should also, on request, have an opportunity for reconsideration by the decision-making body.

The objective of these procedures, and many of the recent court decisions, is determination of whether nonrenewal violates a teacher's academic freedom. The suggested procedural steps are less demanding than those applying to tenure terminations. There need be no hearing before a panel of tenured faculty, for example, and the burden of proof is on the probationer.

Whatever else, academic freedom and constitutional rights are as important to the probationer as they are to the tenured teacher. While these procedural steps are not tantamount to tenure, they diminish latitude for arbitrary and capricious action and provide probationers with some of the safeguards demanded by others in their profession. Accordingly, a review of existing contract renewal requirements in light of apparent judicial trends is clearly warranted.

3. Post-Tenure Evaluation

A type of post-tenure evaluation exists on most campuses, at least to the extent that promotions or salary increases entail review of an individual's contributions. The following statement, communicated by a faculty member interested in this subject, is descriptive of this type of existing evaluation:

> Everyone is naturally concerned about promotions or salary increases--even tenured faculty. In making decisions on these matters, the faculty evaluates every member of the department every year. The candidate's teaching record, contributions to scholarship, and contributions to the university and the public are all considered. Thus, there is a great incentive for each member of the faculty to remain active, even though he may have tenure.

Be this as it may, most existing evaluation procedures do not involve the application of negative sanctions (ultimately, termination) so much as the withholding of positive rewards, and they would have little effect on the faculty member at the top of the ranking and salary scale.

Some notion of comprehensive post-tenure evaluation procedures was contained in a proposed amendment to the Community College Tenure Act (an amendment that was not adopted). This would have required continuing evaluation of both probationary and tenured faculty by the Tenure Review Committee (the Act requires this only of probationary faculty). Faculty members would be periodically apprised of the findings of the Review Committee, and those failing to maintain professional competence could be placed on probation for a year and, should they fail to improve their performance, subsequently dismissed.

The tenure policy of Fairhaven College at Western Washington State College, is a further illustration. It refers to post-tenure evaluation with the following statement:

> Our tenure policy is quite conventional, by the standards of the American Association of University Professors, with one important exception. The difference is simply that it sets forth that tenured faculty should expect to be evaluated at periodic intervals and may be subject to dismissal if it is determined that they are no longer able to serve the college effectively in the capacity in which they were appointed.

At Fairhaven, "tenured as well as nontenured faculty should expect to be evaluated periodically--annually during the first three years (the probationary years) of appointment, again during the sixth year, and subsequently at least every four years--and to be informed of the evaluation by March 15 of the year in which it was made." A tenured faculty member is given two years after a warning to re-establish himself. During this period he is denied promotion and salary increase. Near the end of the warning period, he is again evaluated, and he may be reinstated without prejudice, or proceedings leading to his termination may be initiated, whichever is appropriate.

The Evergreen State College prescribes extensive continuing evaluation procedures in its faculty employment program. However, Evergreen does not utilize the generally accepted approaches to academic tenure, and its procedures may not be applicable to other institutions following more traditional routes. Briefly, Evergreen requires each faculty member to maintain a portfolio

containing examples of his work (video tapes, journal entries, letters and memoirs, evaluations by students, etc.). The portfolio provides the basis for both salary and reappointment reviews. When such reviews are necessary, the portfolio is forwarded to the academic deans who make their recommendations and forward them, with the portfolio, to the Provost. Failure to maintain the portfolio is ground for dismissal. Since faculty at Evergreen do not have tenure, but are covered by three-year contracts, evaluation occurs automatically each three years.

Taking the view that incompetence among tenured faculty is a manifestation of arrested career development, the University of Utah Tenure Commission somewhat euphemistically refers to post-tenure evaluation as "programs of career development." For the Commission, such programs should entail not only systematic periodic review of academic performance, but counseling services and other forms of professional assistance for faculty members seeking to improve their performance.110

These are a few of the suggestions operating in this area. Others may be more drastic. For example, tenured faculty members not functioning at desired levels of competence or effectiveness might be required to take courses in effective teaching (also mentioned by the Utah Tenure Commission). The opprobrium this might engender would be an inducement to the maintenance of professional competence.

Whatever their particular nature, the development of post-tenure evaluation procedures would eliminate what most authorities on academic tenure recognize as its most glaring deficiency.

4. Codes of Faculty Responsibilities

A few of Washington's institutions have codes of faculty responsibilities; most do not. Such codes, consistent with academic freedom and responsibility, define the institution's expectations concerning standards of faculty performance and provide fairly specific bases for identifying acts that are grounds for dismissal or disciplinary action.[111]

The Utah University Tenure Commission proposed a review draft of a Code of Faculty Responsibilities for that institution. It defined the standards of academic freedom and responsibility that would prevail there (the AAUP's Statements were declared applicable), described acts and omissions that would warrant disciplinary action (failure to meet scholarly obligations and breaches of responsibility, both of which were clarified by series of examples), and the sanctions that would apply to breaches of the Code (private reproval, letter or reprimand, official censure by the president, imposition of probationary terms, suspension without pay, reduction in pay, or dismissal, in order of severity).[112]

The Evergreen State College Social Contract is an example of a code of faculty responsibilities, although it applies to more than faculty members. Violations of the Social Contract could be sufficient cause for nonrenewal.

Such codes provide an important base for individual tenure policies. Both the institution and the tenured faculty member are afforded some notion of mutual expectations and obligations, and breaches of the code, actually breaches of contract, can be effectively prevented. When it occurs, errent behavior can

be readily identified and the appropriate sanctions quickly applied. Hence, such codes have an obvious relationship to comprehensive tenure programs.

5. Complaint Office or Ombudsman

An on-going post-tenure evaluation system and diligent enforcement of a code of faculty conduct require a procedural system for handling complaints and grievances. Many problems are presently resolved in an informal manner, and this should continue, but there is also a need for machinery outside of the formal structure to perform many of the functions suggested in the preceding recommendations, functions ranging from the provision of a hearing in cases of contract nonrenewals to the investigation and adjustment of complaints against tenured faculty members. Confidentiality in these matters, at least until the complaint is investigated, is important, for the potential for retaliation or embarrassment is real. Thus, a unit should be available to receive and process complaints, on a confidential basis, from all segments of the academic community, students, faculty and administrators.

In its report, the University of Utah Tenure Commission suggested that the principal functions of such a unit (or complaint officer) would be those of an ombudsman. It would have broad powers to "investigate, mediate, conciliate, and adjust complaints against faculty members" but would not possess disciplinary authority.[113] Inaccurate reports would be screened, those found to have merit could be pursued along any of several formal or informal channels. If the

matter could not be handled to the satisfaction of the complainer at this level, he would still have the prerogative of initiating formal proceedings, in accordance with the concepts of academic due process prevailing on campus.

The particular powers and functions of such a unit would be defined by the institution; it is clear that it could perform many of the functions discussed in the recommendations of this report, and the potential is great.

6. Refining Tenure Termination Procedures

The greatest bottleneck in most tenure systems appears to be the tenure termination procedures. This is understandable, for these are the essence of a tenure system. However, the relative infrequency of their application suggests that something may not be working as it should. If many of the aforementioned recommendations were implemented (post-tenure evaluation, procedures for collecting and processing complaints, etc.), it is likely that tenure termination procedures might be more effectively employed. As clear evidence of sloth or incompetence were assembled (and there is little clear evidence of this now), it seems likely that few would be desirous of the exposure of a tenure termination hearing and would seek alternative routes to improvement or termination or would resign quietly. In either case the desired end would be achieved.

Tenure termination procedures in the Community College Tenure Act, which are not particularly dissimilar to those applying in most four-year institutions, appear to impose heavy burdens on these comparatively smaller institutions. In the community colleges, tenured faculty members are entitled to a hearing on

the question of dismissal; the hearing must be before a review committee composed of members of the administrative and teaching staff, with the faculty members in the majority. Faculty members dismissed in accordance with specified procedures may appeal the decision in the courts by following the appropriate procedures of the Administrative Procedures Act. These appeal provisions represent the most significant departure from procedures applying in the four-year schools.

Problems occur as the institution, operating with comparatively smaller faculty and administrative complements, absorbs the costs of releasing personnel to participate in hearings, fulfills procedural requirements, and retains counsel to defend its action as the case is appealed in the courts. One community college reports the expenditure of more than $15,000 in a tenure termination case, and the appeal has not yet been heard by the courts. Additional difficulties are associated with ambiguities surrounding the authority of the review committee, specifically, whether its recommendations in termination cases are to be binding on the appointing authority.

Much of the problem in both the two-year and four-year schools may relate to faculty involvement. According to the AAUP, "Faculty status and related matters are primarily a faculty responsibility."[114]

Whether appointments, reappointments, promotions, etc., should be the primary responsibility of the faculty, the segment most directly affected by adverse decisions, can be debated. That the faculty should be represented is not questioned; whether it should dominate is. If faculty involvement minimizes implementation of tenure termination procedures, or renders them particularly

unwieldy, costly, or ineffective, then, in the interest of public accountability, the balance probably needs redress.

Tenure termination procedures need review, particularly in light of other steps toward more precise statements of adequate cause of dismissal (faculty codes) and post-tenure evaluation programs.

One sector of higher education not represented in either the tenure termination or award process is that comprised of students.* Several institutions have taken steps to allow students a voice in these matters by requiring employment of student evaluations of teachers in the decision processes. During the 1972 special legislative session a bill which would have amended the Community College Tenure Act to provide for student representation on review committees was heard but not passed. Students are seeking a voice in these matters, and their opinions should be given due consideration in tenure decisions.

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*At its April 3, 1972 meeting, the Student/Faculty/Administrator Advisory Committee to the Council on Higher Education considered the question of student representation in tenure award and termination proceedings. The students on the committee drafted and presented the following resolution:

> Student attitudes can provide a significant measure of the effectiveness and competence of an instructor in the student-teacher relationship. Therefore, we feel that when tenure granting and tenure renewal is considered, a major factor in that consideration should be those attitudes expressed by students about the instructors in question. Procedures should provide that equal weight be given to student, administrative and faculty opinions:
>
> (1) Students should be part of the initial tenure recommending group and
> (2) Evaluation instruments and methods should meet with the approval of all constituencies involved, students, faculty, and administration.

B. Some Alternatives to Tenure

The preceding recommendations are aimed at the development of more effective tenure programs. They center on modifications in existing policies, and, in this sense, they are steps to the strengthening of tenure. There are other paths that might be followed, but for the most part these, as alternatives to tenure, are unproved. They are reviewed for the interest of those who may wish to know more about them.

1. A System of Procedural Due Process

A frequently-mentioned alternative to tenure involves its abolition and substitution with an effective system of procedural due process, a process applying in the dismissal of all faculty, probationary and tenured. Such a move would bring the faculty's 'merit system' more into line with other merit systems, particularly those of the public service, and would end the primary distinction between probationary and tenured personnel.

This alternative to tenure is suggested by President Silber of Boston University: ". . .all we need to protect academic freedom adequately is to specify the procedures that must be observed in the decision not to reappoint any member on the faculty. And I think that kind of protection should be made available to all professors and instructors."[115]

This alternative turns on the definition of the due process to be specified in lieu of tenure. If, in effect, existing tenure termination procedures of due process are made applicable to all members of the faculty, then tenure is not being eliminated: rather, it is being extended, and the fears of many institutional administrators would find foundation as flexibility in probationary appointments ended. If the definition goes the other way and less comprehensive, albeit more efficient, procedures of due process are substituted for existing tenure termination procedures, then resistence among currently tenured faculty could be anticipated.

Thus, it is not enough to suggest the substitution of due process for tenure. The substitute must be defined, and unless a careful balance is struck it seems certain that the result will antagonize one of the involved elements.

The application of due process in place of tenure may have greater chance of success where the interests are not vested. Such was the case when The Evergreen State College was created. Evergreen's approach to tenure accords with the 'due-process' alternative: rather than tenure, it employs a system of due process applicable to all faculty terminations and nonrenewals. Review of this approach is appropriate here.

2. The Evergreen Alternative to Tenure

At The Evergreen State College, the faculty voted against the development of a traditional tenure program. Instead, a system based on three-year renewable contracts was developed. Each three years, each faculty member veteran or fledgling, faces the question of contract renewal. Any faculty member may be denied reappointment after any period of service for:

a. Lack of evidence of continuing professional development;

b. Unwillingness or inability to assume responsibilities in both of the major teaching modes (underlying the College's teaching program);

c. Failure to produce a portfolio;

d. Violation of a teaching team agreement or covenant;

e. Failure to participate in required faculty seminars; and

f. Violation of certain tenets of the Social Contract.

Persons whose contracts are not renewed have access to an adjudicative procedure on request. In all cases, the burden of proof is on the institution. The College and the teacher each select two persons for an ad hoc hearing committee, and these four members select a fifth, who acts as judge. He may be from within or without the College. There is provision for selection of the fifth member in the event of deadlock. After consultation, investigation, and hearing, the judge's decision is binding on both sides. The hearing procedure must begin within two weeks of the request for a hearing.

Evergreen's alternative might not be acceptable to faculties at other institutions. The portfolio and evaluation requirements might soon grate on faculty working in different teaching environments. Moreover, Evergreen, being a new institution, did not have to contend with a tenured faculty element. Finally, it may be argued that Evergreen has not turned from tenure, but by placing the burden of proof on the institution and eschewing probationary requirements it has, in fact, provided tenure for all faculty members.

Remaining alternatives to tenure fall into the general category of contractual arrangements.

3. Contractual Alternatives to Tenure

Several contractual arrangements are viewed as alternatives to tenure. Three in particular are considered here: "rolling appointments," long-term contracts, and lectureships.

a. Rolling Appointments

Franklin Pierce College in New Hampshire limits academic tenure to three-year "rolling appointments." Each 'tenured' faculty member receives a new three-year appointment at the end of each year of satisfactory performance ('probationary' appointments are for one year). If his teaching skills deteriorate, he has a year to improve them when his contract is not renewed the second year. If he registers an unsatisfactory performance for two years, he is not reappointed, but he has a full year to seek employment elsewhere.

This program provides a measure of equity to both the professor and the college, incentives to remain in top teaching form are present, evaluative procedures are required, and the threat to the professor's exercise of his academic freedom is naturally diminished by his contract's length: if he remains in good professional form, he is assured of a job for the next three years.

The major disadvantage to such an approach is the evaluation chores that departmental administrators and deans are forced to perform. These are extensive, but they are little more so than the evaluation requirements that might normally attend an efficient tenure system, and the effectiveness of the program could more than balance them.

The three-year rolling appointment alternative emerges as a new and promising alternative to tenure. If it is accompanied with minimal procedural safeguards governing contract nonrenewals, then it may have the potential for meeting the needs of both the institution and the faculty.

b. Long-Term Renewable Contracts

As an alternative to tenure, institutions might issue fixed term contracts (three years, five years, etc.) with the proviso that employment would automatically terminate at the end of the contract period unless a new contract is offered. Such a system is in existence at Massachusetts' Hampshire College and Maryland's St. John's College.

This approach might continue to require the application of court-defined minimums of notice and hearing, since it would involve cases of contract nonrenewal. Thus, under this alternative, if a faculty member chose to contest an issue, the institution would have to be prepared to state why he was not rehired and provide an opportunity to appeal the decision.

When examining the fixed-term contract as an alternative to tenure, the University of Utah Tenure Commission questioned whether it would place the burden of establishing adequate grounds for continuation on the faculty member or whether employment would normally be continued unless nonrenewal was for adequate cause, with the burden of proof on the institution. It viewed the former as unfair to the faculty member, as little more than no protection at all, and saw the latter as little different from existing tenure systems.[116]

Coupled with the extensive evaluation tasks that administrators would be forced to perform, which the Commission felt would conduce to tolerance of incompetence to a far greater extent that a tenure system, the fixed-contract alternative was felt to offer little promise of correcting the flaws of tenure. The single virtue, for the Commission, was its constructive approach to dealing with incompetence or irresponsibility after tenure is acquired.[117]

The Commission's points are well taken, though it can be argued that the single virtue (dealing with incompetence in the post-tenure period) is compelling. The use of long-term renewable contracts offers the professor some protection against arbitrary dismissal, at least during the early years of the contract's term, and it provides the institution with a ready means of encouraging the maintenance of professional competence. Yet, much of the effectiveness relates finally to the term of the contract. If granted for exceptionally long periods, perhaps more than three years, usefulness diminishes. If granted for shorter periods, such contracts offer the faculty member little protection. Hence, in reviewing this alternative, careful consideration must be given this matter.

c. Untenured Lectureships

Another alternative to tenure, or an adjunct in situations where the governing board does not wish to increase the number of tenured professors, is the untenured "lectureship." In this case, the institution hires 'lecturers' who agree to waive tenure in exchange for adjustments in salary. For example, an instructor would exchange the tenure option for the pay of an associate or full professor (such an agreement would seem to obviate AAUP requirements for tenure after its specified service period).

Many of the staunchest supporters of tenure see a danger that this practice would lead individual faculty members to negotiate away their academic freedom in return for increased salary. Whether this would occur is not certain, such negotiations are difficult to envisage. What is clear is that such lectureships would cost more money than if tenure accompanied them. In some respects this substantiates the view that tenure serves to keep salaries low by reducing the mobility and bargaining power of individual professors.

These are the most frequently discussed alternatives to tenure. One 'alternative' has not been discussed: Unions and Collective Bargaining. The reasons for its omission are several. The most important is that the subject is worthy of a study in itself. The most logical is that collective bargaining is likely to occur whether or not there is tenure.* Teachers are organized in the public schools and the community colleges, and both employ tenure systems. In a real sense, professors in the colleges and universities have organized for a number of years, at least to the extent they are represented on the membership rolls of the AAUP, which is, in the final analysis, a professional organization.

*It may be argued that tenure, particularly during a period when surpluses of qualified teachers exist, contributes to the onset of collective bargaining, especially among faculty in the nontenured or probationary ranks. As an institution seeks to limit the portion of tenured members on its faculty, opportunities to achieve tenure for probationary faculty are limited. Since tenure must be awarded at the end of the probationary period, or the faculty member dismissed, it is reasonable to predict that faculty in the nontenured ranks will turn to collective bargaining to protect their jobs, particularly in the presence of large numbers of qualified doctorates seeking teaching positions.

The Utah Tenure Commission separated tenure from collective bargaining with the statement that "efforts at unionization of faculty to facilitate collective bargaining on matters of job security, as well as questions of academic freedom, would. . .inevitably follow from an abolition of the tenure system."[118] The Commission is probably correct, but it is also clear that collective bargaining systems are likely to spread regardless of tenure (the Commission indicated that the situation at Utah University was such that unionization would encounter resistance as long as tenure exists; there is no reason to question this statement, but it may not apply to other institutions in other areas).

Again, whether unionization is good or bad is not a subject of this report. That it is likely to spread seems clear. For the moment, however, collective bargaining is not presented as one of the alternatives to tenure.

The recommendations of this report have emphasized modifications in existing tenure systems. Alternatives to tenure have been considered, but there is insufficient experience at this time to recommend their implementation.

In conclusion, the abolition of tenure does not seem warranted. Problems associated with various facets of most tenure systems have been identified, but in all cases remedial steps can be employed. Thus, the emphasis of this report has been on ways of strengthening academic tenure. To the extent that a tenure system lacks accountability, it is vulnerable. Because of tenure's close

traditional relationship with academic freedom, the faculty, officials, and governing boards of the institutions of higher learning, persons who should understand the importance of academic freedom to a viable democracy, have an absolute responsibility to develop and maintain effective and resilient tenure systems. The recommendations of this report are placed at their disposal.

FOOTNOTES

1. American Council on Education, Campus Tensions: Analysis and Recommendations, Report of the Special Committee on Campus Tensions, S. M. Linowitz, Chairman, (1970, Washington) pp. 42-43.

2. The Report of the President's Commission on Campus Unrest, September, 1970, pp. 6-25, 26.

3. "New Ways of Going to College Get HEW Chief's Endorsement," Chronicle of Higher Education, March 15, 1971.

4. "Faculty Featherbedding," Time, May 10, 1971.

5. "Tenure for Teachers is Beginning to Crumble as Critics Push Drive," Wall Street Journal, April 16, 1971.

6. American Association of University Professors, "Academic Freedom and Tenure, 1940 Statement of Principles and Interpretive Comments," AAUP Policy Statements and Reports, 1971 Edition, p. 2.

7. The quoted portion of this statement is taken from "The Final Report of the Commission to Study Tenure," University of Utah, May, 1971 (mimeo), p. 10.

8. The quoted portion of this statement is taken from the Resolution on Tenure adopted at the Fifty-seventh Meeting of the AAUP held in May, 1971.

9. Hofstadter, Richard, and Metzger, Walter P., The Development of Academic Freedom in the United States, (1955, Columbia), p. 407.

9a. Joughin, Louis (Ed.), Academic Freedom and Tenure (1967, University of Wisconsin), p. 174.

10. Byse, Clark & Joughin, Louis, Tenure in American Higher Education: Plans, Practices, and the Law, (1959, Cornell) p. 2.

11. AAUP 1940 Statement, op. cit., p. 2.

12. Particular institutional practices or policies may depart from the patterns presented. The discussion describes a composite tenure system constructed from the most common elements evident in this state.

13. An interesting study of the role of the department chairman in tenure award cases is A Study in Role Conflict: The Departmental Chairman in Decisions on Academic Tenure, by Frederick Lane (1967, University of Florida Public Administration Clearing Service, Study No. 29.).

14. A major departure occurs at The Evergreen State College where tenure is replaced by a system based on three-year contracts and grievance procedures applicable to cases of nonrenewal. Evergreen's substitute for tenure is discussed later in this report.

15. Byse & Joughin, Tenure in American Higher Education, op. cit., p. 2.

16. idem., cited in the testimony of Richard H. Peairs, Director of the Western Regional Office of the AAUP in testimony before the California Legislative Committee on Education, October 24, 1969.

17. Byse & Joughin, Tenure in American Higher Education, op. cit., pp. 3-4.

18. Machlup, Fritz, "On Some Misconceptions Concerning Academic Freedom," in Joughin (Ed.) Academic Freedom and Tenure, op. cit., p. 180.

19. University of Utah Report, op. cit., p. 13.

20. Lord Chorley, "Academic Freedom in the United Kingdom," in Baade, Hans (Ed.), Academic Freedom, The Scholar's Place in Modern Society, (1964, Ocena) p. 232. The author makes the point that the existence of academic freedom in such full measure in the British universities depends much more on tradition, on atmosphere, and upon public opinion, than upon legally established rules.

21. AAUP Policy Documents and Reports, 1971 Edition, p. 2.

22. The AASCU Statement culminates a process that began in 1970 when the organization withdrew its endorsement of the AAUP's 1940 Statement, which it felt deficient in the subject of academic responsibility.

23. AAUP Policy Documents and Reports, 1971 Edition, op. cit., p. 2.

24. MacIver, Robert M., Academic Freedom in Our Time (1955, Columbia), pp. 8-9.

25. AASCU, 1971 Statement.

26. AASCU, 1971 Statement.

27. Washington institutions also classify day-to-day pedagogical responsibilities (meeting classes, conduct of final examinations, posting and honoring office hours, etc.) as "academic responsibilities." These, however, might be more properly labled "teaching responsibilities."

28. Adopted by the University Senate, December 2, 1971.

29. "Attacks on Tenure Mount," Chronicle, op. cit., March 22, 1971.

30. Williams, Richard C., "Tenure Practices Redefined," American Junior College Journal, May, 1969, p. 26.

31. The quoted portion of this statement is from Hofstadter and Metzger, The Development of Academic Freedom. . . ., op. cit., p. 454.

32. Hofstadter and Metzger, The Development of Academic Freedom . . . ., op. cit., p. 454.

33. These analogues are cited in Byse and Joughin, Tenure in American Higher Education, op. cit., page vii, or in the University of Utah Tenure Commission Report, op. cit., p. 3.

34. Byse & Joughin, ibid.

35. Statements in this section are based on Merit System Rules 356.24.330 through 356.28.070, Rev. 3, filed 6/1/65.

36. Some of the smaller private institutions utilize committees consisting of administrative officers. In the public institutions, however, the primary hearing committee is comprised of faculty.

37. AAUP, "Working Glossary of Terms Recognized in American Higher Education Relative to Academic Due process and Faculty Status," (mimeo) and AAUP Policy Documents and Reports, (1971 Edition) op. cit., p. 36.

38. RCW 28B.50.850, et. seq.

39. AAUP Policy Documents and Reports, op. cit., p. 2.

40. Source: Shaw, B. N., Academic Tenure in American Higher Education, (1971, Adams) p. 38.

41. RCW 28B.50.856.

42. Source: Shaw, Academic Tenure. . ., op. cit., p. 50.

43. These observations were made by Professor Machlup, "In Defense of Academic Tenure," in Joughin, (Ed.), Academic Tenure and Freedom, op. cit., pp. 313-315.

44. idem., pp. 315-316.

45. "Tenure for Teachers is Beginning to Crumble as Critics Push Drive," Wall Street Journal, April 16, 1971.

46. Cornell's efforts to cope with this problem were described in an unpublished memorandum to the faculty transmitted on request to the staff or Council on Higher Education by the Provost, Dr. Robert A. Plane.

47. Dressel, Paul L., "A Review of the Tenure Policies of Thirty-one Major Universities," The Educational Record, July, 1963, p. 248.

48. Miller, John Perry, "Tenure: Bulwark of Academic Freedom and Brake on Change," Educational Record, Summer, 1970, p. 243.

49. Time, May 10, 1971, p. 64.

50. "Tenure for Teachers. . . .," Wall Street Journal, op. cit., April 16, 1971.

51. Section 2533, University of Washington Faculty Handbook.
NOTE: The Community College Tenure Act also makes such provision. It states that tenured faculty members, upon appointment to administrative posts other than institutional president shall retain their tenure (RCW 28B.50.860).

52. Dressel, op. cit., p. 252.

53. Cited in Joughin (Ed.), Academic Freedom and Tenure, op. cit., p. 331.

54. Baade, H. J., Academic Freedom, op. cit., p. 195.

55. AAUP, 1940 Statement, op. cit.

56. ibid.

57. Wall Street Journal, April 16, 1971, op. cit.

58. Shaw, Academic Tenure, op. cit., pp. 63-65.

59. AAUP 1940 Statement, op. cit.

60. Cited in Joughin, Academic Freedom and Tenure, op. cit., p. 37.

61. AAUP, 'Working Glossary of Terms Recognized in American Higher Education Relative to Academic Due Process and Faculty Status," (mimeo), May, 1971.

62. Byse & Joughin, Tenure in American Higher Education, op. cit., pp. 44-49.

63. Source: Shaw, Academic Tenure. . ., op. cit., p. 63.

64. RCW 28B.50.862.

65. Byse & Joughin, Academic Freedom. . .op. cit., p. 53.

66. Section 2562, University of Washington Faculty Code.

67. Section 2562, University of Washington Faculty Code.

68. RCW 28B.50.869.

69. RCW 28B.50.863.

70. Section 2562, University of Washington Faculty Code.

71. RCW 28B.50.864.

72. The 'Definition' of Academic Due Process is taken from the AAUP's "Working Glossary," op. cit.

73. Final Report of the Tenure Commission of The University of Utah, op. cit., p. 35.

74. Machlup, "In Defense of Academic Tenure," in Academic Freedom and Tenure, op. cit., p. 318.

75. Wall Street Journal, April 16, 1971, op. cit. Van Alstyne's prescription is questioned by Charles A. Barker, a New Jersey educational consultant: "Once a man has tenure, it's easier to put up with him than to try to fire him. Dismissal of a tenured faculty member involves a long and complex procedure usually used only in cases of moral turpitude.", ibid.

76. Utah Tenure Commission Report, op. cit., p. 36.

77. "Proposing a National Board to Accredit Tenured Professors," The Chronicle of Higher Education, November 8, 1971.

78. Saltzman also suggests creation of an extra-institutional body, "a national tenure accreditation board," which would provide tenured faculty evaluation, much in the manner of an accreditation board, and report its findings to the institution for any action it might wish to take.

79. ibid.

80. Machlup, op. cit., p. 314.

81. A recent 'legalistic' treatment of tenure and academic freedom is "The Constitutional Rights of Teachers and Professors," by William Van Alstyne, in the Duke Law Journal, October, 1970, pp. 841-879. An essay likely to delight lawyers is "Academic Tenure: The Search for Standards," by MaryAnn Cohen in the Southern California Law Review, Vol. 39, 1966, pp. 593-608. An impressive treatment of academic freedom, with important references to academic tenure, is "Developments in the Law: Academic Freedom," The Harvard Law Review, Vol. 45, 1968, pp. 1045-1159. Finally, the legality of tenure is treated in some detail in Byse and Joughin, Tenure in American Higher Education, op. cit., particularly, Chapter III, "Tenure and the Law."

82. This distinction and some of the following comments on Washington's lower school tenure provisions are taken from the 1965 Washington State University unpublished doctoral dissertation of Eddie K. Erickson, An Analysis of Teacher Dismissal Cases in the State of Washington.

83. RCW 28A.67.070.

84. RCW 28B.50.851., et. seq.

85. This is a generalized statement reflecting the language of the individual statutes covering the powers of the Board of Regents of the University of Washington (RCW 28B.20.130), and Washington State University (RCW 28B. 30.150), and the Boards of Trustees of the State Colleges (RCW 28B.40.120).

86. Byse and Joughin, Tenure in American Higher Education, op. cit., p. 72.

87. These observations were made by William Van Alstyne, Duke Law Journal, op. cit., pp. 859-860.

88. idem., p. 1110.

89. idem., p. 1111.

90. Joughin (Ed.), Academic Freedom and Tenure, op. cit., pp. 143-148.

91. ibid.

92. AAUP Bulletin, Vol. 12, p. 6.

93. AAUP Bulletin, Vol. 42., pp. 61-64.

94. AAUP Bulletin, Vol. 22, pp. 19-21.

95. AAUP Bulletin, Vol. 26, p. 619, and Vol. 28, p. 11, pp. 48-60.

96. AAUP Bulletin, Vol. 26, pp. 471-475.

97. Byse and Joughin, Tenure in American Higher Education, op. cit., p. 95.

98. idem., pp. 99-103.

99. 53 Wash. 2nd, 460, 1959; 362 US 474; and 58 Wash. 2nd, 112, 1961.

100. Duke Law Journal, op. cit., p. 864.

101. These comments are extracted from "Supreme Court Agrees to Hear Teacher Case," Chronicle of Higher Education, July 5, 1971. The article summarizes a paper presented to the National Association of College and University Attorneys by Thomas J. Cunningham, General Counsel of the Regents of the University of California.

102. ibid.

103. ibid.

104. Poddar vs. Youngstown, U. S. District Court, Northern District of Ohio, Eastern Division, No. C 71-227, p.2.

105. ibid.

106. "Institution Ordered to Reinstate Three Nontenured Teachers," The Chronicle of Higher Education, November 8, 1971.

107. 317 F. Supp. 659, 1970.

108. Furniss, W. Todd, "Giving Reasons for Nonrenewal of Faculty Contracts," Educational Record, Fall, 1971.

109. idem., p. 3, emphasis thus.

110. Utah Commission Report, op. cit., pp. 68-69.

111. Utah University Tenure Commission, op. cit., p. 60.

112. idem., pp. 62-65.

113. idem., p. 71.

114. "Working Glossary," op. cit.

115. Chronicle of Higher Education, op. cit., March 22, 1971.

116. Utah Tenure Commission Report, op. cit., pp. 48-49.

117. idem., p. 50.

118. idem., p. 50.